



VOL. II
TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 514

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

**BENJAMIN FAINBLATT AND MARJORIE FAINBLATT,
INDIVIDUALS, DOING BUSINESS UNDER THE FIRM
NAMES AND STYLES OF SOMERVILLE MANUFACTUR-
ING COMPANY AND SOMERSET MANUFACTURING
COMPANY**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT**

PETITION FOR CERTIORARI FILED DECEMBER 8, 1938

CERTIORARI GRANTED JANUARY 9, 1939

SUPREME COURT OF THE UNITED STATES

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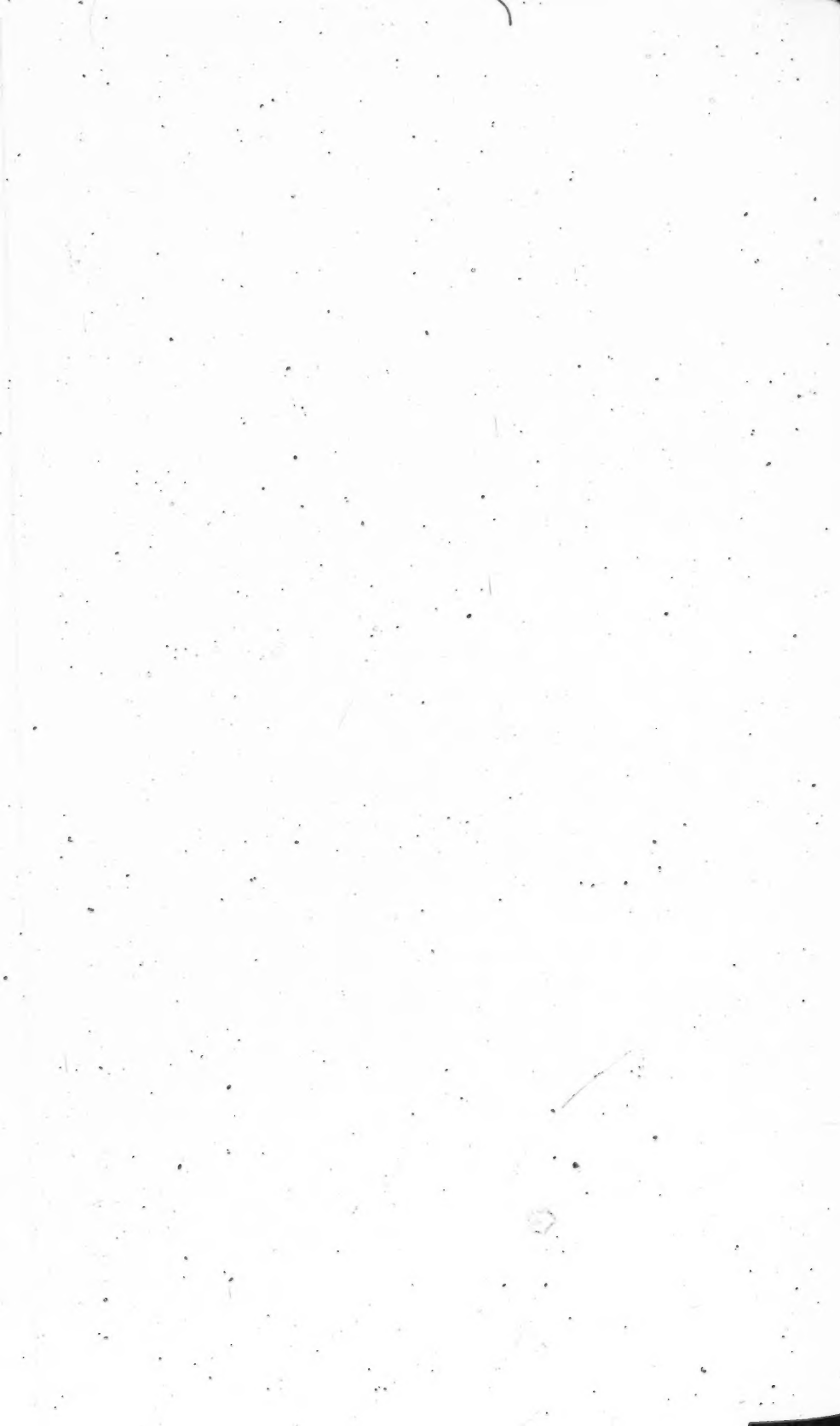
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RECORD

IN THE
UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

BENJAMIN FAINBLATT and MARJORIE
FAINBLATT, individuals, doing business under the
firm names and styles of SOMERVILLE MANU-
FACTURING COMPANY and SOMERSET MAN-
UFACTURING COMPANY.

Respondents.

October Term, 1937.

**PETITION BY RESPONDENTS FOR PERMIS-
SION TO ADDUCE ADDITIONAL EVIDENCE**

*To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Third Circuit:*

Benjamin Fainblatt, formerly trading as Somer-
ville Manufacturing Company, and Margorie Fain-
blatt, formerly trading as Somerset Manufacturing

Company, respondents in the above entitled cause, pursuant to the privilege extended to them by the provisions of an Act of Congress approved July 5, 1935, (Public No. 198, 74th Congress, 49 Stat. 449, C. 372, 20 U. S. C. A. Section 151 et seq.), respectfully petition this Honorable Court for leave to adduce evidence in support of their defense against the charges made and filed against them by the National Labor Relations Board in certain proceedings known upon the records of the National Labor Relations Board as Case Number C-53, the title thereof being "In the Matter of Benjamin Fainblatt and Margorie Fainblatt, individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company and International Ladies Garment Workers' Union, Local No. 149."

In support of this petition, the respondents respectfully show:

1. On or about the 29th day of January, 1936, the National Labor Relations Board issued its complaint against Benjamin Fainblatt and Marjorie Fainblatt, individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, respondents herein, charging that the respondents had engaged in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, which said complaint, together with a notice of hearing thereon, was, on the 28th day of January, 1936, served upon the respondents. Thereafter on the 4th day of February, 1936, the respondents duly filed their answer.

*Petition to Adduce Additional
Evidence*

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2. Thereafter on the 14th day of February, 1936, the Board made an Order designating Robert M. Gates as Trial Examiner.

3. Thereafter on the 17th, 18th, and 19th days of February, 1936, the Board, by said Trial Examiner, held hearings upon the charges stated in the complaint. At said hearings, the respondents appeared specially and moved to dismiss the complaint by filing with the Board their motion in writing, a copy of which motion is hereto annexed and marked Schedule "A." The motion was denied and thereafter the hearing was continued at the instance of the Board. During the hearing, counsel for the Board moved to amend the complaint to conform the pleadings to the proof by adding an additional name in the complaint as a complaining witness, namely, a witness, Theresa Yemma, and having her testimony incorporated in the complaint as part of the allegations contained therein. Counsel for the respondents objected to the motion of the Board's counsel contending that the adding of an additional name to the complaint was, in effect, making an additional charge to which counsel pleaded surprise and informed the Board Examiner that he was unprepared to defend against the additional charge. The motion was granted over the objection of respondents' counsel and the complaint upon which the proceedings were predicated was changed to conform with the testimony of Theresa Yemma. Thereafter the respondents called no witnesses and introduced no evidence.

4. Thereafter and on the 3rd day of June, 1936,

*Petition to Adduce Additional
Evidence*

the Board stated its findings and issued and entered the following Order directed to respondents:

"Order

On the basis of the foregoing findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Benjamin Fainblatt and Margorie Fainblatt, individuals doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, shall:

1. Cease and desist from:

(a) In any manner interfering with, restraining, or coercing their employees in the exercise of their right to join and assist Local No. 149 of the International Ladies Garment Workers' Union or any other labor organization;

(b). Discouraging membership in Local No. 149 of the International Ladies' Garment Workers' Union or in any other labor organization of their employees by discharging, refusing to reinstate, or otherwise discriminating in regard to tenure or terms of employment against employees who have joined or assisted Local No. 149 or any other labor organization of their employees;

(c) Refusing to bargain collectively with Local No. 149 of the International Ladies' Garment Workers' Union as the exclusive represen-

tative of the employees in the tailoring department of the Somerset Manufacturing Company

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Local No. 149 of the International Ladies' Garment Workers' Union as the exclusive representative of its employees in the tailoring department in respect to rates of pay, wages, hours of employment and other conditions of employment.

(b) Offer to Elizabeth Schoka, Lorraine Heitz, Ethel Rice, Angelina Matteis, Mary Gecik, Fay Katz, Anna Santoro and Theresa Yemma immediate and full reinstatement to their former positions without prejudice to any rights and privileges previously enjoyed.

(c) Offer employment to all employees of the tailoring department who went on strike on September 18, 1935 or within one week thereafter where positions held by such employees on September 18, 1935 are now held by persons who were not employees of the respondents on September 18, 1935, but were employed subsequently thereto, and place all other employees who struck on September 18, 1935 or within the following week on a preferential list to be offered employment according to their seniority in respondents' employment, as and when their labor is needed.

(d) Make whole said Elizabeth Schoka, Lorraine Heitz, Ethel Rice, Angelina Matteis,

*Petition to Adduce Additional
Evidence*

Mary Gecik, Fay Katz, Anna Santoro and Theresa Yemma for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which she would normally have earned as wages during the period from the date of her discharge to the date of such offer of reinstatement, less earnings from other employment during such period.

(e) Post notices in conspicuous places in the plant stating (1) that the respondents will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of thirty (30) consecutive days.

5. The Board now comes before this Honorable Court and prays for a decree enforcing in whole said order of the Board and requiring respondents to comply therewith.

6. Your petitioners, the respondents, assign the following as their reasons for their failure to call any witnesses and introduce testimony:

(a) That the case at Bar arises out of one of the earlier complaints filed by the National Labor Relations Board immediately following the passage of the Act;

(b) That on the 17th, 18th and 19th days of February, 1936, the respondents were of the firm belief that the National Labor Relations Act was contrary to the Constitution of the United States of America and that it deprived respondents of their freedom of contract and property without due process of law.

*Petition to Adduce Additional
Evidence*

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(c) The respondents were also of the belief and opinion that the Act, if Constitutional, did not apply to respondents who were, at the most, engaged solely in manufacturing wearing apparel in Somerville, New Jersey. The respondents did not engage in buying or selling either the raw materials or finished garments.

(d) The respondents, by reason of their beliefs as set forth in the next two preceding paragraphs, did not call any witnesses and introduced no testimony; and this Honorable Court is asked to decree the enforcement of an Order based on the record of a hearing at which only one side of the issue was presented.

7. Your petitioners affirmatively show:

(a) That the record of the Clerk of the County of Somerset and the State of New Jersey, and the records of the Office of the Secretary of State for New Jersey, truly show that Benjamin Fainblatt was the sole individual doing business as the Somerville Manufacturing Company; that Margorie Fainblatt was the sole individual doing business as the Somerset Manufacturing Company;

(b) Those persons named in the Board's complaint as employees of the respondent, Benjamin Fainblatt, immediately before the strike were not employed by the respondent, Benjamin Fainblatt, immediately before the strike, during the strike, or after the strike, but, on the contrary, respondent, Benjamin Fainblatt, discontinued his operations as the Somerville Manufacturing Company on or about February 15, 1935, and continued at the plant in Somerville, New Jersey, as an employee of Mar-

*Petition to Adduce Additional
Evidence*

gorie Fainblatt, trading as the Somerset Manufacturing Company; that the sole employer of the persons named in the Board's complaint was Margorie Fainblatt, and that the respondent, Benjamin Fainblatt, is not a proper or necessary party in the above entitled cause;

(c) That on or about the 2nd day of January, 1937, Margorie Fainblatt, the registered owner of the Somerset Manufacturing Company, sold and conveyed the business of the Somerset Manufacturing Company to Benjamin Fainblatt, who, from the 2nd day of January, 1937, to the day and date of this petition has been conducting the business of the Somerset Manufacturing Company; that since the order of the board on the 3rd day of June, 1936, conditions at the plant have been peaceful and production has been unimpeded and unhampered; that the number of employees has increased from approximately fifty-eight, which number allegedly were employed in the last week of August, 1935, as shown by the evidence presented at the hearing before the Board, to an approximate average number of two hundred employees for the year 1937 to date.

(d) Your petitioners further show that no election has ever been held at the plant premises for the purpose of having the employees select their representative and that this Honorable Court is asked to enforce the Order of the Board which will affect the welfare of approximately one hundred and fifty employees who had no opportunity to express their will with respect to selecting a representative.

(e) Your petitioners further show that since the

order of the Board on the 3rd day of June, 1936, attempts have been made to settle any and all differences between the International Ladies Garment Workers' Union, Local No. 149, and such attempts have been futile in that the International Ladies Garment Workers' Union, Local No. 149, through its representative, Harry Posner, has steadfastly refused to consider any bargaining unless the respondents, or either of them, would, in the first instance, enter into a contract requiring all employees at the Somerset Manufacturing Company plant to be members of the said Union. Your petitioners further allege that they are reliably informed by their counsel that the International Ladies Garment Workers' Union, Local No. 149, would take steps to have the instant case discontinued by the National Labor Relations Board if the Somerset Manufacturing Company would enter into a "Closed Shop" agreement with the said Union.

(f) Your petitioners further show that since the strike in question on the 18th day of September, 1935, a number of those persons involved in the alleged dispute have returned to their work at the Somerset Manufacturing Company.

8. The respondents verily believe that they can, by proper evidence, support the allegations, matters and things set forth and that such evidence is material to reaching a fair conclusion on the issue involved.

WHEREFORE, The respondents pray this Honorable Court that it decree and order the National Labor Relations Board to permit the respondents

*Petition to Adduce Additional
Evidence; Schedule "A"*

further hearing in the proceedings in the case at Bar known upon the record of the National Labor Relations Board as Case Number C-53.

LEON GEROFISKY,
Attorney for Respondents.

T. GIRARD WHARTON,
Associate Counsel.

JOSEPH HALPERN,
Associate Counsel.

Dated at Somerville, New Jersey, this 2nd day of October, 1937.

Schedule "A"

MOTION

Now comes Benjamin Fainblatt and Marjorie Fainblatt, individually and doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, the respondents in the above cause, appearing specially by their attorney, Leon Gerofsky, Esquire, and move the National Labor Relations Board to dismiss the Complaint in this suit, for it appears that:

1. The Sections 8, 9, and 10 of the National Labor Relations Act constitute an arbitrary and unreasonable interference with the contractual relationships between Respondents and their employees, all of which cause the National Labor Relations Act to be illegal.

2. Section 7 of the National Labor Relations Act is illegal. The National Labor Relations Act is contrary to the Constitution of the United States of America in that it deprives the respondents of freedom of contract and of property without due process of law.

3. The National Labor Relations Board, having taken an active part in the institution of the proceedings, in that it has issued the complaint against the respondents, is disqualified from exercising a judicial function and from hearing the proceedings.

WHEREFORE respondents pray that:

1. The complaint be dismissed.

Leon Gerofsky,
Attorney for Benjamin
Fainblatt and Margorie
Fainblatt, individuals, do-
ing business under the firm
names and styles of Somer-
ville Manufacturing Com-
pany and Somerset Manu-
facturing Company.

State of New Jersey,
County of Somerset, ss:

MARGORIE FAINBLATT, being first duly sworn according to law upon her oath deposes and says that she is one of the petitioners in the foregoing petition named; that she has read the foregoing petition and has knowledge of the contents

*Petition to Adduce Additional
Evidence; Schedule "A"*

thereof; and she further states that the statements made in the foregoing petition are true to the best of her knowledge and belief.

MARGÖRIE FAINBLATT, .

Sworn and subscribed to before me this 2nd day
of October, 1937.

.....
A Master in Chancery of
New Jersey.

(Seal)

ORDER

This matter being opened to the Court by Leon Gerofsky, attorney for the respondents, Benjamin Fainblatt and Margorie Fainblatt, individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, in the presence of Philip Levy, attorney for the petitioner, National Labor Relations Board, and it appearing that the respondents, Benjamin Fainblatt and Margorie Fainblatt, have filed a petition with this Court for leave to adduce further testimony and evidence before the National Labor Relations Board in the proceedings in the above entitled cause, known upon the record of the National Labor Relations Board as Case No. C-53, all in pursuance to the terms of Section 10 (e) of an Act of Congress approved July 5, 1935, (Public No. 198, 74th Congress, 49 Stat. 449, C. 372, 20 U. S. C. A. Section 151 et seq.); and the Court having heard the arguments of counsel and having considered the verified petition and answer thereto and being satisfied that additional evidence to be adduced by the respondents is material and that there were reasonable grounds for their failure to adduce such evidence in the hearing heretofore held before the National Labor Relations Board.

It is on this 15th day of October, 1937, ORDERED that the National Labor Relations Board permit the respondents, Benjamin Fainblatt and Margorie Fainblatt, individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing

Company, a further hearing within one week from the date hereof; and

It is further ORDERED that such additional evidence adduced by the respondents at such hearing shall be taken before the National Labor Relations Board, its member, agent or agency, together with any findings thereon, and be made a part of the transcript of the record in the above entitled cause; and

It is further ORDERED that the proceedings in the above entitled cause before this Court be stayed until the order of this Court is complied with.

BY THE COURT

NOTICE OF HEARING

A decision having been issued in the above matter by the Board, and a petition for enforcement having been duly filed in the United States Circuit Court of Appeals for the Third Circuit, and thereafter the respondent having filed a petition for leave to adduce additional evidence, and the Court having granted said petition on October 11, 1937,

PLEASE TAKE NOTICE that on the 22nd day of October, 1937 at 10 o'clock in the forenoon, in Room 942, Woolworth Building, 233 Broadway, New York, New York, a hearing will be conducted pursuant to the above direction of the Court, before the National Labor Relations Board by a trial examiner to be designated in accordance with its Rules

Notice of Hearing

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and Regulations—Series 1, as amended, Article IV, Section 2 and Article II, Section 23.

You may appear and be heard if you so desire.

By direction of the Board:

BENEDICT WOLF,

(Seal)

Secretary.

Dated this 15th day of October, 1937.

AFFIDAVIT AS TO SERVICE

District Of Columbia, ss:

I, Bertram Katz, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 15th day of October, 1937, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Notice of Hearing to the following named persons, addressed to them at the following addresses:

Leon Gerofsky, Esq.

Central Building

Somerville, N. J.

Alexander Feller, Esq.

41-43 Paterson Street

New Brunswick, N. J.

BERTRAM KATZ.

Subscribed and sworn to before me this 15th day of October, 1937.

Harold Wilson.

(Seal)

Certificate**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

I, Benedict Wolf, Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of:

Order Designating Trial Examiner, In the Matter of Benjamin Fainblatt and Marjorie Fainblatt, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company and International Ladies' Garment Workers Union, Local No. 149, Case C-53

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 20th day of October A. D. 1937, at Washington, D. C.

BENEDICT WOLF,
Secretary.

(Seal)

ORDER DESIGNATING TRIAL EXAMINER

IT IS HEREBY ORDERED that ROBERT M. GATES act as Trial Examiner in the further hearing in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1, as amended, of the National Labor Relations Board.

Dated, Washington, D. C., October 20, 1937.

By direction of the Board:

BENEDICT WOLF,

(Seal)

Secretary.

Stamp Received: Oct. 21,
1937, Regional Office, Dis-
trict 2

HEARING

Room 942,
233 Broadway,
New York, N. Y.
Friday, October 22, 1937

The above entitled matter came on for hearing,
pursuant to notice, at 10:00 o'clock a. m.

Before:

ROBERT M. GATES, Trial Examiner.
DAVID A. MOSCOVITZ, Esq., Attorney on
behalf of the Board.

LEON GEROFISKY, Esq., (Central Bldg.,
Somerville, N. J.)

JOSEPH HALPERN, Esq., and T. GIR-
ARD WHARTON, on behalf of the Respond-
ents.

PROCEEDINGS

TRIAL EXAMINER GATES:

You may proceed.

MR. MOSCOVITZ:

I assume that Mr. Gerofsky has an opening
statement to make, because this case comes be-
fore you by order of the Third Circuit Court
of Appeals on a petition by the Respondents
for permission to adduce additional evidence,
but before Mr. Gerofsky proceeds, I would like
to make part of the record here, the order of
the Board designating the Trial Examiner to

hear this proceeding, and the Notice of Hearing, as well as the affidavit of service.

MR. GEROFISKY:

I have no objection to the designation.

TRIAL EXAMINER GATES:

That may be marked Board's exhibit No. 1.

(Thereupon the document above referred to was received in evidence and marked Board's Exhibit No. 1 as of October 22, 1937.)

MR. GEROFISKY:

And I have no objection to the Notice of Hearing offered.

TRIAL EXAMINER GATES:

That may be marked Board's exhibit No. 2.

(Thereupon the document above referred to was received in evidence and marked Board's Exhibit No. 2, as of October 22, 1937.)

MR. MOSCOVITZ:

So there won't be any confusion in the markings of this proceeding and proceedings which have already been heard, could this be Board's exhibit No. 1 with today's date and this Board's exhibit No. 2 of today's date.

TRIAL EXAMINER GATES:

Yes, they may be marked that way.

MR. MOSCOVITZ:

Then, I would like to make part of the record the Respondents' petition for permission to adduce additional evidence, so the Board may have before it the papers in the Third Circuit Court of Appeals.

TRIAL EXAMINER GATES:

Is there any objection?

MR. HALPERN:

Is it the intention of making it part of the record by typing it into the record?

MR. MOSCOVITZ:

No, just an exhibit.

MR. GEROFISKY:

Don't you have the original there?

MR. MOSCOVITZ:

I have the original, but I thought we could agree it was a copy, and let it become an exhibit.

MR. GEROFISKY:

Of course, the original at any rate is in the docket with the Circuit Court.

MR. MOSCOVITZ:

I have the original. When I say that copy was served on the Board by Mr. Gerofsky, this copy is a true copy. I think there is no question about that, is there Mr. Gerofsky?

MR. GEROFISKY:

That is right.

MR. MOSCOVITZ:

I offer this as No. 3.

TRIAL EXAMINER GATES:

Any objection?

MR. GEROFISKY:

No.

TRIAL EXAMINER GATES:

It may be admitted.

(Thereupon the document above referred to was received in evidence and marked Board's Exhibit No. 3 as of October 22, 1937.)

MR. MOSCOVITZ:

Finally, I offer the order of the Court which

has no signature, but it is a true copy. I think, we can agree?

MR. GEROFISKY:

The body of the order is a true copy. There is no signature on that order. At any rate, the original order is on file with the other proceedings at the Circuit Court in Philadelphia.

MR. MOSCOVITZ:

I offer it as Board's exhibit No. 4 of today's date.

TRIAL EXAMINER GATES:

If no objection, it may be admitted.

MR. GEROFISKY:

No objection.

TRIAL EXAMINER GATES:

It may be admitted.

(Thereupon the document above referred to was received in evidence and marked Board's Exhibit No. 4 as of October 22, 1937.)

MR. MOSCOVITZ:

Before Mr. Gerofsky proceeds now, I want to enter my objection in the record to the proceeding at this time, on the ground that the petition to adduce evidence should not have been allowed by the Third Circuit Court of Appeals, and that it erred in ordering the proceeding at this time.

TRIAL EXAMINER GATES:

I have reserved decision on that objection.

MR. GEROFISKY:

May I be heard with respect to the objection?

TRIAL EXAMINER GATES:

You may.

MR. GEROFISKY:

This hearing comes about through the petition which has been offered as an exhibit, which petition was filed with the Circuit Court of Appeals for the Third Circuit at Philadelphia. The hearing was had on the petition October 11th.

The Court upon hearing the argument of counsel representing the Board, counsel representing the petition, granted this hearing in accordance with the provisions of the Act, that is, the Labor Act, specifically Section 10-E of the Act.

The Court felt that there was reasonable cause for the failure on the part of the Respondents to offer testimony on the original hearing, and that there is such evidence set forth in the petition, or such allegation in the petition as to indicate to the Court's satisfaction that those allegations if proven and brought about in the way of evidence, would be very material to a just decision.

MR. HALPERN:

I would like to have one statement on the record, to the effect that Mr. Moscovitz's objection to the taking of this testimony is improper, because of the fact that this Board through the Examiner has no authority to contravene the order of the Third Circuit, where this cause at the present time is pending.

TRIAL EXAMINER GATES:

I will reserve decision on that.

You may proceed.

MR. GEROFISKY:

I will call Miss Fainblatt.

MARJORIE FAINBLATT was called as a witness by and on behalf of the Respondents, and was duly sworn.

MR. GEROFSKY:

I want to withdraw Miss Fainblatt and put another witness on out of turn.

May I state, if the Court please, with respect to objections, will it be noted that they are automatically set forth any exceptions on the rulings? Rather than call for the exception on each ruling. I thought it would save time.

MR. MOSCOVITZ:

I think it would too. If an objection is overruled, the exception is automatically saved. I agree I would like to join with Mr. Gerofsky on that.

TRIAL EXAMINER GATES:

Very well.

MR. GEROESKY:

Mr. Hawley, will you please take the stand?

WALLACE G. HAWLEY, Jr. a witness called by and on behalf of the Respondents, having been first duly sworn, was examined and testified as follows:

Direct Examination

BY MR. GEROFSKY:

Q. Mr. Hawley, where do you reside.

A. Somerville, New Jersey.

Q. How long have you lived in Somerville, New Jersey?

A. I moved there in 1913. In 1918, I left Somerville and went into service, came back in 1922 and lived there until the present time.

Q. What is your business?

A. Real Estate, Insurance, and Travel Bureau.

Q. Are you acquainted with Benjamin Fainblatt, one of the Respondents in this case?

A. I am.

Q. And how long have you known him?

A. Ever since his firm came to Somerville. We were responsible in working up the lease and leasing the property which they occupy.

Q. That was in 1934?

A. That was in 1934.

Q. August?

A. Some time the latter part of July or the first part of August. I don't recall just what date it was.

Q. Do you know Marjorie Fainblatt, another Respondent in this case?

A. I do.

Q. How long have you known her?

A. Approximately the same length of time.

Q. Do you know what business those two persons were engaged in when they first became acquainted with you about August, 1934?

A. I do.

Q. What was that business?

A. Manufacturing of women's and children's sportwear.

Q. Were, to your knowledge, both engaged in manufacturing businesses there in Somerville?

A. Yes.

Q. Where was the plant located?

A. Depot Square. It is on a little street they call Wassau Place.

Q. Now, Mr. Hawley, did you ever appear at the plant in the month of August, 1935 and speak with a group of the girls?

A. Yes, sir.

Q. Do you recall the exact date?

A. Well, it was the first part of August, the seventh or eighth or ninth. I could not tell you exactly what the date was. It was on or about that time.

Q. That was in the year 1935?

A. '35.

Q. And what was the occasion for your visit?

A. Naturally; being in the business that I happen to be in, we are interested in promoting Somerville. And I went down there to the plant and talked to the girls in the plant—oh, I don't recall exactly what I said.

Q. Now, Mr. Hawley, who called you to the plant?

A. Mr. Fainblatt.

Q. And you did, nevertheless; speak to the girls?

A. Yes, sir.

Q. Was anyone else present at that time to speak to the girls?

A. I believe, as I recall it, Freas Hess. He was the Mayor of Somerville.

Q. Is he the Mayor of Somerville today?

A. Yes, sir.

Q. And now, Mr. Hawley, at a prior hearing held in February, 1936, Marie Marano, one of the witnesses offered by the Labor Board testified as follows, with respect to what you had to say in your address to the girls.

MR. MOSCOVITZ:

What page of the record is that?

MR. GEROFISKY:

Page 171 in the transcript of record.

BY MR. GEROFISKY:

Q. A He told us to stick to our boss, because that is where our—

Withdraw that question for the moment.

Withdraw that question just for the moment.

Who addressed the girls first, you or the Mayor?

A. I was introduced by Mr. Fainblatt first.

Q. Who spoke to the girls first?

A. Mr. Fainblatt.

Q. Who spoke second?

A. I think I did.

Q. Did you stay to hear the Mayor address the girls?

A. Yes, sir.

Q. Did you hear what he had to say?

A. Yes, sir.

Q. Now, Marie Marano, one of the witnesses on behalf of the Board testified—

MR. MOSCOVITZ:

What page?

MR. GEROFISKY:

Page 171 in the record.

BY MR. GEROFISKY:

Q. That the Mayor said the following:

A. He told us to stick to our boss, because that is where our bread and butter was, and that we should have no connection with the Union. That our boss was against the Union. If we walked out on strike, we would be on relief, and it was terrible to be on relief, and he told us to bring our troubles to the boss."

She further testified immediately following:

“Q. Did he advise you to stay away from the Union?”

“A. Yes.”

Now, in hearing the Mayor address the group of girls, advise them to stay away from the Union?

A. No, sir.

Q. Did he suggest to the girls that they should have no connection with the Union?

A. No, sir.

Q. And you heard his entire statement?

A. I heard his statement, Yes, sir.

Q. Now, you addressed the group, and on page 172 of the transcript of record, Marie Marano, a Board witness, on being questioned as to what you stated had this to say:

“A. He said they weren't allowed to smoke, and one fellow got caught smoking, so this fellow got fired. So they all walked out on strike for this one fellow to get him back to work. So they were out of work so long, that when they did go back, they had to put up so much money. So it would not do any good. So he openly stated that it would not do no good to join the Union, because he had the experience, and he told us he really felt we should be glad, because he had a girl in his office that worked for him that made \$8.00 a week, using her brains.”

Did you, or did you not state to these girls that they should not, that it would do them no good to join a Union?

A. I did not.

Q. Did you tell those girls on that occasion not to join a Union?

A. No, sir.

Q. Did you at any time on that occasion prior thereto or subsequent thereto ever tell the

girls in the employ of the Somerville Manufacturing Company not to join a Union?

A. No, sir.

Q. What did you say to the girls?

A. I told them they should do as Mr. Fainblatt had said when he talked first. Any grievances within the shop should be taken up with him first, and give him an opportunity to iron any difficulties that might occur.

Q. And was that the gist of your talk to the girls?

A. The gist of my talk was to endeavor to create a thought of harmony within the plant, not so much for the benefit of the plant alone, but to keep the plant in Somerville, and give employment to Somerville people.

Q. Now, Mr. Hawley, did you of your own volition speak with any of the girls individually at about that time, August, 1935?

A. Yes.

Q. And what did you have to speak about to those girls?

A. I spoke to two or three of the girls. I can only recall one of their names, as to whether she felt that Mr. Fainblatt was being fair to her.

Q. Do you recall the name of that girl?

A. Yes, sir.

Q. What was the name?

A. Fanny Ackerman.

Q. Was she working at the plant at that time?

A. Yes, sir. As a matter of fact I was instrumental in getting her a position there.

Q. Tell me this, did she express satisfaction with her employment there?

A. Yes, sir.

Q. What did she say?

A. She said she had no reason to have any feeling against Mr. Fainblatt, that she was making good money.

Q. Did she have anything to say with respect to working conditions about the plant?

A. They were excellent.

Q. Did she say that?

A. Absolutely.

Q. And Mr. Hawley, you have had occasion to visit that plant at the time Mr. Fainblatt and Miss Fainblatt entered there to operate the business and since that time you have visited it. What have you to say with respect to working conditions about the plant?

A. I would say they were par excellent.

As a matter of fact, at the time we leased the building to Mr. Fainblatt the—

Q. You mean to the Respondents?

A. That is right. I don't know what you call it—the Labor Department, came to the building and we as renting agents went over the various alterations in order to comply with the rules and regulations covering industrial plants.

MR. MOSCOVITZ:

Before you proceed, Mr. Hawley, further, I would like, Mr. Examiner, to move that that answer be stricken. The question of working conditions, hours and wages are in no way involved in the issue before the Board.

TRIAL EXAMINER GATES:

Will you please read the answer?

(The Reporter read the witness' last answer.)

MR. MOSCOVITZ:

My motion goes to the whole answer. I did

not object to the question, but I am now moving the answer be stricken on the ground it is of no relevance, materiality, and competency to the issue before you. Else we will become involved in the issue of working conditions, hours and wages, which are not in any respect involved in this.

MR. HALPERN:

Please, your Honor, the Board in the original hearing went into it quite thoroughly as the record will disclose. And apparently they felt it material at that time, and we are endeavoring to rebut the evidence put in by the Board.

TRIAL EXAMINER GATES:

What particular evidence do you have reference to?

MR. HALPERN:

The question of various—of the testimony of various girls, regarding hours and working conditions.

MR. MOSCOVITZ:

I don't remember any questions on working conditions. Wages, Yes, because it would go to the question of relief in pay, if back pay were to be ordered.

I can't at this moment profess to recollect everything that was testified to in the original proceeding.

If Mr. Halpern tells me now that there was examination on the question of working conditions by me, of the witnesses, then, of course, in fairness to the Respondents' position here to rebut any of that testimony I will be glad to withdraw my motion.

MR. HALPERN:

That is my recollection of it.

TRIAL EXAMINER GATES:

I also have a question here, and that is to the pertinency of this particular line of examination on the reconditioning of the building.

You may proceed at this point, but it seems to me that that is so far as you can go.

BY MR. GEROFISKY:

Q. Just to go back a moment, Mr. Hawley, briefly what were the working conditions in the plant with respect to whether or not they were good or not?

A. Very good.

Q. And did you and Sheriff Adams speak to the group of girls?

A. I did.

Q. Was that the same day that you spoke?

A. No, sir.

Q. Was it before or after?

A. It was after.

Q. Now, the witness, Marie Marano, on behalf of the Board, page 173 in the transcript of record, gave the following answer with respect to a statement made by Sheriff Adams: "So Sheriff Adams told us we had a nice clean place. Said it was clean and sanitary, and he don't believe that any girl made a low pay in there."

"He said being he was looking over the payroll, he did not think so, and he told us we shall have no connection with the Union, because Mr. Fainblatt would never sign for a Union."

Did Sheriff Adams tell those girls never to join a Union?

A. Not to my recollection.

Q. If he had said it, you would have recalled it?

A. I would have probably recalled it.

MR. GEROFSKY:

I think that is all. You may cross examine.

Cross Examination

BY MR. MOSCOVOTZ:

Q. As I understand your testimony, Mr. Hawley, you were instrumental in getting Mr. Fainblatt to locate in Somerville?

A. Yes, sir.

Q. Did you work out the deal for his locating in Somerville through your office?

A. Yes, sir.

Q. When Mr. Fainblatt discussed locating in Somerville with you, did you take up with him the question of whether or not it was a good place to locate from the point of view of the labor market, the securing of labor and workers for his line of employment?

A. Yes, sir.

Q. And were you at that time fully acquainted with the labor market in that community?

A. Yes, sir.

Q. Was there any discussion between yourself and Mr. Fainblatt as to whether or not the area was an organized or unorganized area from the point of view of labor?

A. No, sir.

Q. Had you before Mr. Fainblatt discussed coming to Somerville with you ever had experience in labor matters?

A. You mean from a renting agent's standpoint?

MR. MOSCOVITZ:

I will withdraw it.

BY MR. MOSCOVITZ:

Q. Had you before Mr. Fainblatt came to Somerville ever had experience in labor union matters?

MR. GEROFISKY:

I submit, Mr. Examiner, Mr. Moscovitz should define that question, make it definite, specific. It is very broad.

MR. MOSCOVITZ:

I will be glad to.

BY MR. MOSCOVITZ:

Q. Were you ever a member of a labor organization?

A. Yes.

Q. Where?

A. New York Shipyard.

Q. And were you a member of the Union?

A. Yes, sir.

Q. What Union was that, Mr. Hawley?

A. Machinists and Mechanics Union—Machinists Union.

Q. Was that the Machinists Union that is affiliated with the American Federation of Labor?

A. I don't know. This was in 1919.

Q. Was it the International Association of Machinists?

A. Yes.

Q. And were you ever in a strike?

A. Yes, sir.

Q. Were you ever one of the strikers?

A. I don't know what you would call it. I was ordered out, that was all.

Q. As a member of the Union then you were ordered to go on strike?

A. Yes, sir.

Q. Did you go on strike?

A. Yes.

Q. And was the strike from the point of view of the workers a successful or unsuccessful one?

A. Unsuccessful.

Q. How did that affect you at that time?

A. It affected me that I went back before the strike was over.

Q. And resumed your employment?

A. Yes, sir.

Q. And did you continue in your affiliation with the Union?

A. No, sir.

Q. Did you resign?

A. Yes, sir.

Q. And you have not since that time been affiliated with any labor organization?

A. No.

Q. So that your experience with a labor union was not of the most favorable from your point of view, is that right?

A. No, sir.

Q. When you say that you were ordered out, you indicated to me that you were not at that time interested in going out, is that right?

A. We were ordered out, and I did not know what it was all about. I did not know why we were ordered out.

Q. Now, when Mr. Fainblatt located in Somerville and started operations, did he keep in touch with you from time to time as to how he was getting on?

A. Yes, sir.

Q. And did he communicate with you when he

first learned that the International Ladies' Garment Workers' Union of America was attempting to organize his plant?

A. Yes, sir.

Q. Do you recall when in relation to the day that you spoke in the plant he gave you this advice?

A. Right about that time.

Q. Did he meet with you and discuss the matter with you?

A. Yes, sir.

Q. Were there other persons with you at the time of this discussion?

A. Not at the first discussion, No.

Q. Where was the first discussion held?

A. In Mr. Fainblatt's office.

Q. And was it just between you and Mr. Fainblatt?

A. Yes, sir.

Q. Do you recall when in relation to the day that you spoke with the girls—a week, two weeks before, three days before?

A. No.

Q. You can't? All right.

A. It may have been a week, it may have been three days. I don't know.

Q. All right. It has been a long time. Can you tell me what that conversation was about?

A. Yes, sir.

Q. Will you?

A. The conversation was that a gentleman had called upon Mr. Fainblatt, and Mr. Fainblatt told me that he did not have anything against any organization, what he was interested in was keeping his plant going and keeping the girls employed.

At that time I believe, it may have been a

little after, but I believe it was at that time when an acquisition was made as to pay.

Q. Acquisition or accusation.

A. Yes.

Q. Was made as to pay?

A. And I looked over the payroll records of the plant and from time to time I looked them over, and I said, "Well, heavens, these girls are doing right well."

Q. Yes. Was that the substance of your conversation?

A. Yes, sir.

Q. Did Mr. Fainblatt tell you at that time that he was not going to let any outsider run his business?

A. I don't recall that he said that.

Q. Did you give him any advice in the method that he should invoke in dealing with the labor problem that was confronting him?

A. Only that he agreed with me that he wanted to hear what they had to say.

Q. Now, at that time, there was no strike, was there?

A. No.

Q. Nothing more than a request made by the Union for discussion on questions of recognition, hours, wages, and working conditions, is that right?

A. I don't know that.

Q. Now, did you at any other time after that, but before speaking to the girls in the plant, meet again with Mr. Fainblatt and anyone else to discuss this problem?

A. I think it was about that time when Mr. Fainblatt and Mayor Hess and Mr. Bernardsdale—

Q. Is that Ward Bernardsdale?

A. Yes.

Q. Was he a member of the Council at that time?

A. Yes, sir.

Q. Borough Council?

A. Yes. And Mr. Perry, at my suggestion—

Q. That is William Perry?

A. That is right.

Q. Also a member of the Borough Council?

A. That is right.

At my suggestion, they met with Mr. Fainblatt and looked over the payroll records, and see whether they were satisfied that Mr. Fainblatt was treating the girls properly.

Q. And was that done?

A. Yes, sir.

Q. In your presence?

A. Yes, sir.

Q. In Mr. Fainblatt's presence?

A. Yes, sir.

Q. Where?

A. At—I don't know whether that was at the Borough Hall, or whether it was at the plant. I think it was at the plant.

Q. All right. Was that the purpose of the meeting, of which you have already given?

A. Yes, sir.

Q. No other?

A. No other purpose.

Q. Any discussion about the Union?

A. No, sir.

Q. Or about the fact the Union was bringing on pressure which resulted finally in your review of Mr. Fainblatt's records?

A. As a matter of fact I reviewed Mr. Fainblatt's payroll records long before the strike, in

view of the fact that I was the insurance agent, and all compensation policies are written on an estimated payroll basis.

I had at a request of the company to see or to determine whether the estimated payroll was sufficient.

Q. Yes.

But when you fellows were all together going over Mr. Fainblatt's records, wasn't there even a suggestion among you in discussing this regarding the Union?

A. Not that I recall.

Q. Did they know why they were reviewing the records?

MR. GEROFSKY:

I object.

TRIAL EXAMINER GATES:

He may answer.

BY MR. MOSCOVITZ:

Q. You may answer it.

A. Will you say that again?

Q. Did they know why they were reviewing the records?

A. Well, due to this accusation that had come out.

Q. By whom? By the Union?

A. I don't know who brought it out.

Q. Where did you learn of the accusation?

A. I don't recall whether it was in the paper or where it was.

Q. The only question I have in mind, Mr. Hawley is this: Was this discussion one where all the cards were put on the table, and the Councilmen and the other officials knew exactly what the situ-

ation was, that the Union was coming in, that there was an attempt to organize, that this question of hours and wages had come up, or was it simply some review of the records in an academic way without the men knowing that the Union question was involved?

A. No, this was before there was any trouble.

Q. Before this strike, you mean?

A. Oh, yes.

Q. Yes, but after.

A. No, I think it was even before.

Q. Was it during the N. R. A.?

A. I don't remember the date, but it was during the time of the N. R. A.

Q. Oh, then, it was before even the Union had gotten out there to organize?

A. That is right.

Q. So your meeting with these Borough Councilmen and the others was before your meeting with Mr. Fainblatt alone that you have already told us about, is that right?

A. I don't recall, Mr. Moscovitz, just how the time was.

Q. Well, were there any other meetings between yourself and other persons regarding the Somerville Manufacturing Company, or the Somerset Manufacturing Company before you spoke to the girls in the plant, outside of the ones you have already testified to?

A. No.

Q. Who arranged in August, 1935 for you, the Mayor, to come to the shop to speak?

A. I did.

Q. Was that at Mr. Fainblatt's suggestion?

A. No, sir.

Q. You did it yourself?

A. Yes, sir.

Q. Why?

A. For the simple reason that I had heard of an organization starting in the plant, and I was interested in keeping harmony within the plant.

Q. Yes. Was that the only reason?

A. Yes, sir.

Q. Well, from whom had you heard about this organization in the plant?

A. I don't recall who told me.

Q. Well, what lead you to believe that the existence of the organization in the plant, or the coming of the organization into the plant would lead to disharmony?

A. I don't know. It was just a—I can't answer that, Dave.

Q. Was it because of the experience that you had when you were with the Shipyard people?

A. It might have been.

Q. Did you tell that to the girls?

A. I told them of an incident in the shipyards.

Q. Was it one which related to your own personal experiences?

A. Yes, sir.

Q. How did you tell it to them? Tell us what you told them.

A. I told them of a case where we were called on strike, due to an individual disregarding a rule of the yard.

That happening was, this individual was caught smoking in a tank on board a ship when it was on the ways. The individual was fired, and we were

called out on strike, not knowing what the cause for it was.

Q. Yes.

A. You have heard the rest of it.

Q. Then, that is the incident, that you have already testified to?

A. Yes.

Q. When you told them the story, what was your purpose?

A. My purpose was to try and keep harmony.

Q. Well, was it your purpose to try to keep harmony by indicating to these workers that it would be better for them, and to their best interests to remain out of the Union?

A. No. I had not had that thought.

Q. Well, then, did you tell them that they should remain in the Union?

A. I told them they should take up any grievance with Mr. Fainblatt first.

Q. Individually?

A. Yes.

Q. Did you tell them where to go if they did not secure satisfaction?

A. No, sir.

Q. Now, after you related to them an experience in labor which had been disastrous to yourself, did you then in all fairness to the whole problem relate to them an experience in labor which had been advantageous to workers, and where there have been harmonious relations?

A. No.

Q. Do you know of any?

A. I don't know. Dave

Q. All you know is the bad ones, is that right, Wally?

Now, I am just looking here through the record. Mr. Hawley, to where Mr. Fainblatt, as I recall, said that you came down to talk at his invitation.

MR. GEROFISKY:

What page?

A. I did.

BY MR. MOSCOVITZ:

Q. I understood you to testify that you went down on your own hook, and arranged this meeting.

A. You asked me prior to the first meeting whether I had been down in Mr. Fainblatt's, and I told you I had gone down there on my own volition.

Q. All right. Maybe we misunderstood each other.

Coming then only to the day when you spoke with the girls in the plant, in August, 1935, did you go there at that time at your own volition, or did you go at the invitation of Mr. Fainblatt?

A. Mr. Fainblatt.

Q. Did Mr. Fainblatt or you arrange for Freas Hess to come down?

A. I did.

Q. Was that at Mr. Fainblatt's suggestion or was it your own idea?

A. My own idea.

Q. You are sure of that?

A. Yes, sir.

Q. Now, when Mr. Fainblatt spoke first you listened to him, didn't you?

A. Yes.

Q. Then after you finished second, you listened to the Mayor make his speech, is that right?

A. I don't recall whether I came before the Mayor or the Mayor came before me.

Q. Be that as it may, you heard it, you heard the other men talk?

A. Yes.

Q. What did Mr. Fainblatt say in your best recollection?

A. In brief, the thought that he conveyed was that he wanted to treat all fair and square, and that if there was any grievances in the shop that he wanted the opportunity to talk to the girls, and iron it out.

Q. That is in sum what he said?

A. Yes.

Q. Did he say anything about the Union?

A. No, sir.

Q. You are sure of that?

A. Positive.

Q. Did he disclose to you what his purpose was in making this speech?

A. Only to make the girls feel a little more liberal toward coming to him. I would take it that way.

Q. And to create also a more lasting foundation for continued harmony?

A. That is right.

Q. That in view of the fact that there was an organizational campaign by the Union going on at that time, is that right?

A. Yes.

Q. Now, when the Mayor spoke, what did he say do you remember?

A. His talk, I would take it, was more—was based more on, here, you have got a job. You are

being paid good money, and why have any trouble, or why go on relief. He did say that.

Q. He did? So when this girl testified that the Mayor spoke about the problem of relief, she was right, wasn't she?

A. As I recall it—

MR. GEROFISKY:

My objection, Mr. Examiner, was directed with respect to that reference to the Union, alleged to have been made by Mayor Hess.

MR. MOSCOVITZ:

Yes.

BY MR. MOSCOVITZ:

Q. Now, when the Mayor on page 171 of the record is supposed to have said that the girls should stick to their boss, because it is their bread and butter, that is true, isn't it?

A. He may have used that term. I don't recall that particular term.

Q. Do you recall in substance he said that?

MR. GEROFISKY:

I will have the Mayor here in due time.

A. I would rather not say, because I don't recall that.

MR. GEROFISKY:

I will produce him.

BY MR. MOSCOVITZ:

Q. I would like to examine you on it too, Mr. Hawley. Unfortunately, Mr. Gerofsky has asked you questions about this part of the record, and I am forced to continue with it, unless the Trial Examiner says I can't.

MR. MOSCOVITZ:

May I continue, Mr. Examiner?

TRIAL EXAMINER GATES:

You may.

BY MR. MOSCOVITZ:

Q. Do you recall whether or not in substance he made that statement?

A. I don't recall, frankly.

Q. Do you recall whether or not he made any reference to the Union as such?

A. As near as I can remember at any of those talks there was never anything brought up regarding any Union affairs.

Q. Was the Union mentioned?

A. Not that I recall in any case.

Q. Was strike mentioned?

A. No, sir.

Q. Then, how was relief mentioned, the fact that these girls would go on relief, if there was no reference that they would be on strike or they would get into trouble because of the Union? They would have to get relief for some purpose. How did he bring that in, if you recall?

A. I don't recall how he brought that in.

Q. Now, about when did Sheriff Adams speak to these girls, after you spoke with them on the day after, rather, what did he say?

A. I can't recall what he said.

Q. Do you recall anything about it?

A. I remember he was there, and I was there, but what he said, I don't recall.

Q. Who got him to come down there?

A. I did.

Q. Was that at your own suggestion, or at Mr. Fainblatt's request?

A. That was at my suggestion.

Q. So when Mr. Fainblatt on page 105 of the record in this case testified that the Sheriff attended the meeting at his invitation, he was not accurate, is that true?

A. He may have done it, done the calling up, called up the Mayor, but as a matter of fact, I think he did say to me, "Will you call Bob Adams," or maybe I did, I don't recall.

Q. You are not sure just who did the calling?

A. I am not. I know I called Bob, whether Mr. Fainblatt asked me to, I don't know.

Q. That is what I wanted to know. All right. The same then would be true as to the Mayor?

A. Oh, I know that I asked the Mayor.

Q. You called him? So when Mr. Fainblatt testified on page 105 of the record that the Mayor attended at his invitation, you would say that is not accurate?

A. Understand, Mr. Moseovitz, we talked together, as I told you before. Now, if Mr. Fainblatt asked me to do it, and I asked the Mayor or asked Mr. Adams, I am answering that question. Yes, I asked him.

Mr. Fainblatt could have asked me to do it, and still he would be correct in his answer just the same as I am in mine. That I asked him. But Mr. Fainblatt asked me to do it.

Q. That is the answer. I am interested only in whether or not Mr. Fainblatt did ask you to ask them to come.

A. Yes.

Q. From his testimony I would gather that he invited them directly.

A. No.

Q. Now then, since your talk was to create harmony in the plant and to keep the plant in Somerville and give employment to Somerville people, I gather that that was the force that stimulated you in your entire interest in this matter, is that right?

A. Yes.

Q. Did you ever discuss this problem with Mr. Posner or any representative of the Union?

A. No, sir.

Q. Did you or any of the other men in Somerville who are members of the Council discuss this matter with Mr. Posner?

A. I don't know. I did not.

Q. Was it your best judgment that the best interests of this plant would be served by the elimination from the scene of this labor union?

A. I did not say that. I did not give it a thought.

Q. What?

A. I did not give the labor union a thought.

Q. Then, your references in August when you spoke to these girls about your experiences in a labor organization had nothing to do with your speaking about the union problems?

A. No, I did not give that a thought.

Q. And the fact that these speeches took place at Mr. Fainblatt's invitation, and at your own invitation at the time that the Union was organizing, had nothing to do with your thought about the union being in the plant, is that right?

A. Well, I did not know that they were organizing at first.

Q. But you did not give a thought to the Union?

A. I did not give the Union a thought at all.

Q. That had nothing to do with your speeches or the content of your speeches or the subject of your

speeches, or your operations in getting these people at the plant to discuss problems with the girls at the time the Union was organizing?

A. My main thought was harmony, keep the plant going good, and to get as many people employed as possible.

Q. Now, do you know whether or not Mr. Fainblatt's plant is organized at the present time?

A. No, sir.

Q. It is not organized?

A. I do not know.

Q. Has Mr. Fainblatt since this trouble that we referred to back in 1935 when the strike was in existence submitted his payrolls and records to you?

A. I have seen them upon many occasions.

Q. Is that for insurance purposes?

A. Yes.

MR. MOSCOVITZ:

That is all.

MR. GEROFISKY:

That is all.

(Witness Excused)

TRIAL EXAMINER GATES:

We will take a short recess at this time.

(The hearing recessed for a few minutes.)

TRIAL EXAMINER GATES:

The hearing will proceed.

MR. GEROFISKY:

I will call Miss Kelly.

WANDA KELLY was called as a witness by and on behalf of the Respondents, and having been first duly sworn, was examined and testified as follows:

Direct Examination

BY MR. GEROFISKY:

Q. What is your full name?

A. Wanda Kelly.

Q. Where do you live, Miss Kelly?

A. Manville, New Jersey.

Q. Where do you work?

A. Somerset Manufacturing Company.

Q. How long have you worked there?

A. Well, I suppose about two years.

Q. How long have you—

Withdraw the question.

Did you at any time leave the employment of the Somerset Manufacturing Company?

A. I did, during the strike.

Q. You did?

A. Yes.

Q. Did you sign a card of membership in the Union?

A. In the Union.

Q. Yes.

A. I did.

Q. How soon after the strike did you go back to work for the Somerset Manufacturing Company?

A. About eight-months, I believe.

Q. Did you voluntarily go back or were you called for?

A. Yes, I did. I went back voluntarily.

Q. And when you went back for employment, whom did you see?

A. I wrote a letter to Mr. Fainblatt, and asked him to take me back. So he told me to come the following week. So I went there, and I got the job.

Q. Did Mr. Fainblatt place any conditions upon your employment with respect to the Union membership?

A. All he said was that you could belong to any Union or organization and still you could work in the plant.

Q. Did you tell him that you had signed a card of membership to the Union?

A. Well, I don't exactly recall that. I don't recall telling him that.

Q. Did he at any time ask you to terminate any association with the International Ladies' Garment Workers' Union?

A. Well, he said he did not care whether we belonged to any union or not.

Q. Now, when you first obtained employment with Mr. Fainblatt originally before the strike, were you asked by him or any of the other supervisors whether or not you were a member of any union?

A. No, he never asked me that.

Q. Now, do you know Miss Fainblatt?

A. Yes.

Q. Did she ever place any conditions of employment upon you?

A. No.

Q. With respect to the Union?

A. No, she never did.

Q. Were you ever discharged for Union activity?

A. No, I never have.

Q. When did you sign a membership card in the Union?

A. Well, I don't really recall what date.

Q. Do you remember where it was, Miss Kelly?

A. I believe it was in Harmony Hall.

Q. Was it after you went out on strike or before?

A. Before.

Q. Was it two weeks or three weeks before you went out on strike?

A. Well, I believe it would be about three. I am not sure of that.

Q. And in that period of three weeks, to the time you signed a membership card, and the time you went out on strike, did Mr. Fainblatt, Mr. Ruby, Miss Fainblatt, or any of the other supervisors at the plant tell you that you could not belong to a Union and work there?

A. No, they never said anything about that.

Q. Did you ever pay dues in the Union?

A. No, I never paid any.

MR. GEROFISKY:

That is all.

Cross Examination

BY MR. MOSCOVITZ:

Q. When did Mr. Fainblatt tell you that you could work without belonging to any union?

A. Well, I don't exactly recall—

MR. GEROFISKY:

Wait a minute. He never told her she would work without belonging to a Union.

BY MR. MOSCOVITZ:

Q. Well, Mr. Fainblatt said according to your

testimony that you can work in his plant and still belong to any union.

A. Oh, that was at the time when I went back for my job.

Q. When you left the job?

A. After I came back. After I wrote the letter.

Q. Tell me, was it on the day when you first returned to work?

A. Yes, right before I started to work he told me that.

Q. Were you alone with Mr. Fainblatt?

A. Yes.

Q. In his office?

A. It was not exactly in the office. It was part of the factory, I think.

Q. Tell us how that conversation started, and what the conversation was.

A. Here is how it was. Mr. Fainblatt told me that I could work in the factory, and I still can belong to any Union or organization, that I would still have my job. That is all there was to it.

Q. Yes, but how did that conversation start? Who brought it up? Did you say anything before that about the Union?

A. Did I say anything? No, I have said I have not said anything.

Q. No, when you were with Mr. Fainblatt at that time, did you start the conversation about the Union or did he?

A. Well, he said I could, and I wrote him a letter before that, see, so that was really after I wrote the letter.

Q. What did you tell him in the letter, do you remember?

A. I asked him if I could have my job back.

Q. Did you tell him anything about the Union in the letter?

A. I don't exactly recall what I wrote in the letter.

Q. Did you say in the letter you were no longer interested in the Union?

A. What is that?

Q. Did you say in the letter, if you recall, that you were no longer interested in the Union, that you would not belong to the Union any more?

A. Well, I never did belong to the Union.

Q. Well, that you would not be in the Union then.

A. That's right.

Q. You told him that in the letter?

A. I could not say that. I don't recall.

Q. Why did you write the letter to Mr. Fainblatt?

A. Well, because I was working in a dress factory at Manville and I was only receiving \$9.00 there, so I thought I would go back here, would make more here.

Q. Where is that dress shop, in Manville?

A. Manville.

Q. Was that during the strike period?

A. I think it was after the strike, I believe. I don't know.

Q. Now, when you wrote to Mr. Fainblatt—now see if your recollection is refreshed—did you ask for your job back?

A. I did.

Q. And did you at the same time say anything to him in your letter about the Union?

A. I don't recall that.

Q. When you spoke with Mr. Fainblatt and he told you that you could work without—whether you

belonged to the Union or not, are you sure that he did not ask you whether or not you were still one of the Union people?

A. No, I don't think he ever asked me that.

Q. Are you sure he did not?

A. I am quite sure of it.

Q. And since then, you have not been with the Union, is that right.

A. That is right.

Q. Has the Union been to you to ask you why you have not continued with the Union?

A. No, I never have.

Q. They never have?

A. That is right.

Q. Now, Mr. Gerofsky asked you whether or not in the three week period before the strike any supervisor told you that you could not belong to the Union, do you recall?

A. No, I don't believe anybody ever said that you can't.

Q. Did any one of them ever speak with you about the Union?

A. What do you mean, in the general, at the plant?

Q. Yes, in that same period of time, either Mr. Fainblatt or Miss Fainblatt, or any of the other supervisors?

A. They never said anything personally to me.

Q. But did they ever say anything that you heard about the Union?

A. What is that?

Q. Did they ever say anything that you heard about the Union?

A. No, they never did.

Q. Never did?

A. No.

Q. Did you ever hear Mr. Fainblatt himself speak about the Union?

A. No.

Q. Did you ever hear of Mr. Hawley who was on the stand before you speak about the Union?

A. Yes, he was over there.

Q. Did you ever hear Mayor Hess speak about the Union?

A. He was there at the same time.

Q. Did you ever hear—

MR. GEROFSKY:

Just a moment. - May I have the question and answer there, the last two questions and the last two answers?

(The Reporter read the last two questions and answers.)

BY MR. MOSCOVITZ:

Q. Did you ever hear Sheriff Adams speak about the Union in the plant?

A. Sheriff Adams? Well, he was there, but I never paid any attention to what he said.

Q. But you did pay attention to what the other men said, didn't you?

A. Not much.

Q. But some?

A. Well, all he said—

Q. All who said?

A. All Mr. Hawley said was that—I don't believe he said anything. Well, I don't exactly recall what he said.

Q. All right. What did Mr. Hess, the Mayor, say?

A. Well, that is so far back I can't remember.

Q. It was at the same time, though, wasn't it?

A. Yes.

Q. What did Mr. Fainblatt say at that time?

A. I can't recall.

Q. But you paid attention to them?

A. To whom?

Q. To these men when they spoke, didn't you listen to them?

A. I guess I heard it, but I probably did not pay much attention to them.

Q. Can you tell me whether or not what they said was for or against the Union?

MR. HALPERN:

I object to the question. It calls for a conclusion. Let her state what she heard, and let us draw our own conclusion.

MR. MOSCOVITZ:

The witness has testified she is unable to give us the conversation.

TRIAL EXAMINER GATES:

She may answer.

A. What was that last question?

BY MR. MOSCOVITZ:

Q. Can you tell me whether or not what these men said was in favor or against the Union?

A. Well, all Mr. Hawley said was if we have any grievances we should go to our boss, and straighten it out before we started anything else.

Q. What else did he say?

A. I guess that was all.

Q. You are sure?

A. Then he said the incident about the shipping, about him being on strike. That was about all.

Q. Anything else?

A. I don't recall anything else.

Q. That is all you remember?

A. That is right.

Q. How about the Mayor? What did he say?

A. I don't recall that either.

Q. Did he say that you girls should go out and join the Union?

A. I don't recall that.

Q. Did he tell you that you should become members of the Union?

A. I don't recall that either.

Q. But you do recall that none of the supervisors in the plant spoke with you about the Union?

A. No.

Q. You don't remember that either?

MR. GEROFKY:

She says they did not.

BY MR. MOSCOVITZ:

Q. Do you recall they did not speak with you about the Union?

A. That is right.

Q. Well, now at this time, during the period, when these men were speaking in the plant, you had already signed your card for the Union, hadn't you?

A. No, I don't think I did.

Q. Well, you signed your card in Raritan before the strike, didn't you?

A. That is right.

Q. These men spoke before you struck, didn't they?

A. Yes, they did.

Q. Now, had you already signed your card when they spoke?

A. I could not say. I don't exactly recall that.

Q. Well, was it your personal impression that

after you heard these men speak that it would be best for you not to be in the Union?

MR. HALPERN:

I object to the question, upon the grounds stated before.

TRIAL EXAMINER GATES:

She may answer it.

A. What was that?

TRIAL EXAMINER GATES:

Read the question.

(The Reporter read the question:

"Q. Well, was it your personal impression that after you heard these men speak that it would be best for you not to be in the Union?")

A. No, I don't think so.

BY MR. MOSCOVITZ:

Q. Did you have any impression after they spoke?

A. No, not much.

Q. Then you don't know anything at all about what happened, is that it?

A. About what happened when?

Q. When these men spoke?

A. I don't exactly recall everything they said.

Q. Who asked you to go up and hear the speech?

A. We were all working at that time.

Q. Was the power turned off?

A. This was at five o'clock.

Q. Was the power turned off?

A. Oh yes, of course.

Q. Do you know who turned it off?

A. No.

Q. Do you know whether or not anyone asked you to listen to the speech?

A. Well, there was Mr. Fainblatt there.

Q. Did he ask you to listen to the speech?

A. I don't exactly recall who asked.

Q. Someone did?

A. Someone may have.

Q. And do you know what the purpose of the meeting was? Did you know what the purpose of the meeting was?

A. Which meeting?

Q. Where these men spoke.

A. Well, they just came over to tell us.

Q. What?

MR. HALPERN:

If it please the Court, obviously the witness can't answer that. She can't know what the purpose these men had.

MR. MOSCOVITZ:

She just started to tell us, Mr. Halpern.

MR. HALPERN:

Which is only an inference.

A. I don't know what it was. All they did was come over and have a speech.

MR. MOSCOVITZ:

All right. That is all.

BY MR. MOSCOVITZ:

Q. Just a moment. You are sure you have told us everything that you want to say?

A. I believe I have.

Q. You are not keeping anything from us?

A. No.

Q. The whole truth?

A. That is what it is.

MR. GEROFISKY:

This witness has taken an oath, and has offered to do her best.

(Witness Excused.)

MR. GEROFKY:

I will call Miss Cicero.

FRANCES CICERO was called as a witness by and on behalf of the Respondents, and first having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. GEROFKY:

Q. What is your full name?

A. Frances Cicero.

Q. Miss Cicero, where do you live?

A. 37 Second Street, Somerville, New Jersey.

Q. How long have you lived there?

A. Well, about four years.

Q. Are you working today?

A. Yes.

Q. And where are you employed?

A. Somerset Manufacturing Company.

Q. And were you one of the girls who went out on strike?

A. Yes.

Q. When did you sign a card of membership to the Union, if you did?

A. The day I walked out on strike.

Q. That was September 18th?

A. Yes.

Q. You never signed a card before that day?

A. No.

Q. Where did you sign it, Miss Cicero?

A. At our headquarters.

Q. Is that the headquarters you maintain at Depot Square or at Harmony Hall in Raritan?

A. Depot Square.

Q. That is the first time you ever signed a membership card in the Union?

A. Yes.

Q. Now, was it before you walked out on strike or after you went out on strike that you signed it?

A. After I went out on strike.

Q. Who asked you to sign a card?

A. I don't remember the girls who asked me.

Q. Did you ever pay any dues?

A. No.

Q. Did you since that time—Withdraw that. How long were you out of work then before returning to the Somerset?

A. I don't remember.

Q. Do you remember when you went back to work?

A. It was about a year and three months.

Q. And when you went back to work, did you apply for the work, or did Mr. Fainblatt or one of the supervisors send for you?

A. I applied for work.

Q. Miss Cicero, who did you see when you went to seek employment?

A. Well, first I asked Mr. Fainblatt, and he told me to see Mr. Ruby about a job.

Q. Did Mr. Fainblatt say anything more than that?

A. No.

Q. And did you then see Mr. Ruby?

A. I did.

Q. The same day?

A. Yes.

Q. Where, at the plant?

A. At the plant, yes.

Q. And did Mr. Ruby give you employment immediately or did he tell you to come back another day?

A. I don't remember whether I worked the same day or not. But I worked—

MR. MOSCOVITZ:

What day was this?

MR. GEROFISKY:

The day she went back for employment.

A. Yes, he gave me a job the same day.

BY MR. GEROFISKY:

Q. Now, did Mr. Ruby, Mr. Fainblatt or any of the supervisors of the plant ever tell you that you could not work there if you were associated with a Union?

A. No.

Q. More specifically, the International Ladies' Garment Workers' Union?

A. They did not say anything.

Q. When you went back for your employment again, was anything said in the way of an order that you drop your affiliation with the Union?

A. No.

Q. Did you work anywhere else between the time of the strike and the time you went back for employment?

A. I did.

Q. Did you ever attend any of the meetings at Harmony Hall?

A. No.

Q. You never did?

A. No.

Q. Aside from signing the card, did you do anything else in union activities?

A. I don't remember.

Q. Did you picket?

A. Yes.

Q. Did you pay dues?

A. No.

MR. GEROFISKY:

That is all.

Cross Examination

BY MR. MOSCOVITZ:

Q. How long were you on strike before you went back to work?

A. We were on strike eight months, and then I went to work at Manville.

Q. Did you write Mr. Fainblatt and ask to go back to work?

A. No.

Q. You applied personally for the job?

A. I did.

Q. When you went out on strike, you say you picketed?

A. I did.

Q. How long did you picket?

A. Well, the eight months we were out on strike.

Q. With a sign?

A. Yes.

Q. What did you go on strike for?

A. Better wages and conditions.

Q. So you wanted to strike for that purpose, is that it?

A. I don't know.

Q. Don't be afraid to answer. I mean when you

went out and struck and were on the picket line, you said you did it for better hours and wages, you wanted to improve yourself, didn't you?

A. I did.

Q. You wanted to go out and do that, didn't you?

A. I went out on strike the following day. I did not know what a Union was.

Q. Is that what you said? You did not know what a Union was?

A. I did know what a Union was, but I did not know much about it.

Q. You did not know much about a Union when you went out?

A. No.

Q. You knew why you went out?

A. The girls told me.

Q. To try to better your condition, isn't that right?

A. It was.

Q. Now then, did you know whether or not the company was for or against the Union?

MR. HALPERN:

I object to the question. It calls for a conclusion that this witness can't possibly answer.

MR. MOSCOVITZ:

I am just asking her to answer that question: Yes or No.

MR. HALPERN:

That is just the purpose. He is asking her if she knows how the company felt about it, how could she possibly know.

TRIAL EXAMINER GATES:

She may answer it, if she knows.

A. I don't know how the company felt about it.

BY MR. MOSCOVITZ:

Q. Did you attend any of the meetings in the plant when Mr. Hawley spoke when Mayor Hess spoke, when Sheriff Adams spoke, when Mr. Fainblatt spoke?

A. I did at the first meeting, but not the second.

Q. When was the first meeting?

A. When Hawley and Mayor Hess spoke.

Q. Spoke?

A. Yes, spoke.

Q. What did the Mayor say?

A. I don't remember.

Q. Do you remember what Mr. Hawley who was on the witness stand this morning, while you were in the room here, said?

A. He was telling us about the time he was out on strike and that we should go to the boss with our troubles first.

Q. That is all he said?

A. That is all.

Q. Did he say anything about the time he was with the shipping yard?

A. He did.

Q. Did he say anything else?

A. I don't remember.

Q. Do you recall whether or not Mayor Hess said anything about relief?

A. It is so far back. I can't recall.

Q. How can you remember what Mr. Hawley said?

A. Well, he mentioned it this morning. It brought it to my mind.

Q. In other words, you are saying what you heard him say?

A. Well, it came to my mind when I heard him.

Q. Suppose I tell you that Mayor Hess told you girls not to join the Union. Does that refresh your recollection?

A. No.

Q. Suppose I told you that Mayor Hess said if you girls had anything to do with this Union, you would end up with being on relief, would that refresh your recollection?

MR. HAWLEY:

I object to the question. It is highly improper to put that type of question to the witness. He is putting words in her mouth, and getting it on the record. She says she does not remember.

TRIAL EXAMINER GATES:

She may answer it.

A. I don't remember.

BY MR. MOSCOVITZ:

Q. Did you speak with any of the bosses in the plant before you went out on strike about the Union?

A. No.

Q. Did they speak with you about the Union?

A. They did not speak about a Union.

Q. Did they speak with you about the organization of the employees?

A. Well, they did not speak to me at all.

Q. What?

A. They did not speak to me about the organization at all.

Q. Were you in a group when they spoke with the other girls, if they did?

A. Yes.

Q. Who was it that spoke?

A. Hawley, and Mayor Hess.

Q. Did they speak about the Union?

MR. GEROFISKY:

I believe the witness has already answered, your Honor, to the best of her ability here. She can't recall what Mayor Hess said. She refreshed to some extent in respect to Mr. Hawley's statement.

TRIAL EXAMINER GATES:

I think Mr. Moscovitz is entitled to pursue this cross examination.

BY MR. MOSCOVITZ:

Q. Can you answer that question?

A. What was the question?

MR. MOSCOVITZ:

Will the Reporter please read the question?

(The Reporter read the question as follows:

"Q. Did they speak about the Union?")

A. I can't recall if they did or not.

MR. MOSCOVITZ:

That is all.

MR. GEROFISKY:

That is all.

(Witness excused.)

MR. GEROFISKY:

Mr. Ruby.

ORSHAN RUBY was called as witness by and on behalf of the Respondents, and having been first duly sworn, was examined and testified as follows:

Direct Examination

BY MR. GEROFISKY:

Q. Mr. Ruby, what is your full name?

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A. Orshan Ruby.

Q. Are you residing in Somerville?

A. Yes.

Q. Are you employed by the Somerset Manufacturing Company?

A. That is right.

Q. And were you so employed in July and August, September, 1935?

A. Yes.

Q. What capacity?

A. What do you mean?

Q. What was your position then?

A. The same as it is now.

Q. What was that?

A. The taking care of the plant.

Q. You are supervisor of production?

A. Supervising production in the plant.

Q. Now, Mr. Ruby, have you the authority to employ help at the plant?

A. Yes.

Q. And have you employed help during the time that you have been there?

A. That is right.

Q. Have you at any time in your association with the Somerset Manufacturing Company, up to date, ever required a girl to terminate any Union activity before she could obtain employment in your plant?

A. I never have.

Q. Did you at any time ever discharge an employee because of Union activity?

A. No.

Q. Marie Marano, a witness for the Labor Board, from the first proceedings—you know her?

A. I do.

Q. And did you know her in July and August, 1935?

A. I did.

Q. Was she employed at the Somerset Manufacturing Company plant?

A. Yes.

Q. At that time?

A. That is right.

Q. Marie Marano, page 165 from the transcript of record testified in answer to the question concerning a conversation with you as follows: "A. He asked me what the Raritan Reds were going to do. Were they going to join the Union or not. And I told him the girls had a right to do what they pleased, and the boss had a right to do what he pleased, and we had a conversation, but that was all he said to me." Did you ever make any such assertion to Marie Marano as I have just read?

A. I never said anything of that kind.

Q. Did you ever tell Marie Marano that she could not work at your plant and be a member of the Union at the same time?

A. I did not.

Q. Or tell her in effect and substance that she could not have employment there if she had any union affiliation?

A. I did not.

Q. Do you know Ethel Rice?

A. I do.

Q. Did you know her in July, August and September of 1935?

A. I did.

Q. Was she at some time during those three months in the employ of the Somerset Manufacturing Company?

A. She was.

Q. Was she under your supervision?

A. She was not.

Q. Did you at any time ever discharge Ethel Rice?

A. No.

Q. Had Ethel Rice at any time while she was employed at Somerset been under your supervision?

A. From time to time probably.

Q. And did you have occasion to lay Ethel Rice off temporarily from time to time while she was engaged there?

A. No.

Q. What?

A. No.

Q. Did you ever have occasion to tell her there was no work today, come back another day?

A. Oh yes, from time to time, as the other girls.

Q. You never fired her?

A. No.

Q. Or discharged her?

A. No.

Q. Did you know Lorraine Heitz?

A. I do.

Q. She was also known as Lorraine Vones?

A. Yes.

Q. Did you know her as an employee of the plant in 1935?

A. I did.

Q. Did you ever discharge or fire Lorraine Heitz?

A. I did not.

Q. Now, Lorraine Heitz testified in February, 1936, page 233 of the record: "A. I had a load of work taking it down on the elevator, and Mr. Ruby

came over and stopped the elevator, and he said he wanted to ask me a few questions. He asked me if I had heard anything about the girls joining a union, and he asked me if I was interested in it. And he asked me several questions about the union, and I told him I had no information to give him. He told me that I don't need to be afraid, that I would not be sorry for any information given to him. And I told him I was sorry that I had no information for him, and he said all right, go on with your work." Did you ever have a conversation with her?

A. I never had any conversation with that girl.

Q. Never?

A. Never spoke to her, and never told her anything at any time.

BY MR. MOSCOVITZ:

Q. Do I understand your answer to be you never had any conversation at any time?

A. Unless she would ask me for work or anything of the kind, that is about all.

BY MR. GEROFISKY:

Q. On that same page, 233, she answered: "Mr. Ruby did not have anything to do with my work. He was foreman to the girls that operated the machines." That was right?

A. That was right.

Q. By reason of that fact, you had very little, if anything, to do with that girl at any time?

A. That is right.

Q. Now, Mr. Ruby, did you know Fay Katz?

A. I did.

Q. Was she in the employ of the Somerset Manufacturing Company?

A. That is right.

Q. Prior to September 18, 1935?

A. Yes.

Q. Did you at any time ever tell Fay Katz that she could not work at the plant and be a member of the union at the same time?

A. I never said anything of the kind.

Q. And did you at any time discharge Fay Katz?

A. I did not.

Q. Were you supervisor in charge of Fay Katz's work?

A. That is right.

Q. What work did she do at the plant?

A. She was an operator.

Q. By the way, how many years' experience have you had in this work supervising?

A. Supervising, about eighteen years.

Q. What have you to say with respect to Fay Katz's ability as an operator? Was she a good one or a bad one?

A. Well, she was not an operator at all.

Q. By that, you mean what?

A. She was not an operator at all. You could not trust her with anything. You could not consider her as an operator.

Q. And how long did you have Fay Katz under you as an operator?

A. I imagine about a year.

Q. And did you take any steps to find work for Fay Katz?

A. I did, as much as I could.

Q. Did you try to improve conditions for her with respect to getting some work that she was particularly adapted for?

A. Well, at that time we have not had work of that kind.

Q. Did you ever tell Fay Katz that there was no work for her? She would have to come back another day?

A. I did.

Q. Lay her off temporarily?

A. I never laid her off, but I told her to come the next day, and so on and so forth.

Q. And why on that occasion or other occasions did the same thing happen?

A. Because I did not have the right type of work for the girls.

Q. Was that a practice with respect to Fay Katz and the other girls as well?

A. What do you mean by practice?

Q. Did you lay off any other girls because there was not any work for them?

A. I did.

Q. From time to time?

A. From time to time.

Q. Did you try to help Fay Katz, knowing that she was a poor operator?

A. I did. I did as much as I could for her.

Q. What did you do for her?

A. I tried to learn her, I tried to teach her to work, and all kinds of things. There is not a thing that that girl could pick up, as far as operating is concerned.

Q. And despite that, you held her there for a year?

A. I did.

Q. Can you assign any reason why you held her there for a year or so?

A. Well, I won't say no reason at all. After all, she comes from a poor family and I happened to know the family, that is about all.

Q. And you did not discharge her?

A. I did not.

Q. Now, did you know Anna Santora?

A. I did.

Q. Was she employed in the Somerset Manufacturing Company?

A. That is right.

Q. In 1935?

A. That is right.

Q. Did you ever tell Anna Santora that she could not work there and associate with the Union at the same time?

A. I never told her.

Q. Or words to that effect?

A. I never told her.

Q. Do you know Elysabeth Shoaka?

A. I do.

Q. And she worked at the plant to August 14, 1935? Did you ever discharge her?

A. I never did.

Q. Now, on page 327 of the record Mrs. Elysabeth Shoaka testified as follows:

"I was laid off. He discharged me. He said I was causing too much trouble. On the day between August 15th, was the next day after I signed.

"Q. You mean you were let out the day after you signed for the Union?

"A. He discharged me. He said, 'You were causing too much trouble.'

"Q. Who is he?

"A. Mr. Ruby, the foreman."

Did you discharge Mrs. Elysabeth Shoaka on or about August 14th, or 15th, 1935?

A. I have not discharged any of these girls.

Q. Specifically, Elysabeth Shoaka?

A. That is right.

Q. Did you ever say to her that you are causing too much trouble?

A. I never said anything of the kind.

Q. Now, did you ever have a conversation with Mrs. Elysabeth Shoaka about a Union?

A. I did not.

Q. And on page 328 in the record, Mrs. Shoaka testified as follows:

“Q. Had you ever before your discharge, had you ever any conversation with Mr. Fainblatt regarding the Union?

“A. Not Mr. Fainblatt.

“Q. With whom?

“A. With Mr. Ruby.”

So in the face of that testimony you say that you never spoke to her?

A. I never spoke to any of these girls about the Union at any time.

Q. I am speaking now of Elysabeth Shoaka.

A. This girl.

Q. And you deny that?

A. That is right.

Q. Do you know Anna Matteis?

A. I do.

Q. And was she employed at the plant in July, August, September, or thereabouts, 1935?

A. She was.

Q. Did you ever discharge Anna Matteis for union activity?

A. No.

Q. Did you ever tell her that she could not work at your plant?

A. No.

Q. And be associated with the International Ladies' Garment Workers' Union or any other Union?

A. I never told her that.

Q. Anna Matteis was also known as Angelina Matteis?

A. Yes.

Q. On page 347 in the transcript of the record, her testimony at a former hearing, is recorded as follows:

"Q. Now, when was the last day you say you worked for the company?

"A. The last day was August 22nd.

"Q. That was the day after you joined the Union?

"A. Yes.

"Q. What happened to you on that day?

"A. Well, the day before I went home about ten thirty because I was not feeling well, so I went in the next morning and the work usually starts at eight o'clock, so I asked for work, and I was told to wait.

"Q. By whom?

"A. By Mrs. Evans and Ruby told me to wait too.

"And so I waited until eight thirty and Mr. Ruby called me to the side where the work was and he told me, he said, 'I am sorry, you are causing too much trouble. I have no more work for you.'

"I said, 'Can you prove it?'

"And he said, 'No.'

"So I said, 'It is all right with me.'

"So I took my belongings, had my work marked and I went home."

Q. Did you ever have such a conversation with her on August 22nd?

A. I did not.

Q. And did you ever tell her that you had no more work for her on August 22nd?

A. I did not.

Q. 1935?

A. I did not.

Q. As a matter of fact, did Angelina Matteis give you any trouble on August 22nd or before that?

A. Not that I can remember.

Q. Mary Gecik. Did you know her as an employee of the Somerset Manufacturing Company?—Mary Gecik?

A. I can't recall the name.

Q. Do you remember her?

I can't hear you.

A. I do not. I can't recall a girl of that name. I don't know her.

Q. Do you know Teresa Yemma?

A. I do.

Q. Was she employed by the Somerset Manufacturing Company?

A. She was.

Q. And did you on August 21, 1935 discharge her from employment from the company?

A. No, I did not.

Q. Now, Mr. Ruby, in the course of your work at the plant, there were slow seasons and busy seasons?

A. That is right.

Q. And at busy seasons you had a greater number of employees over the slow season period?

A. That is right.

Q. And what would you do with the employees

when the work slacked down or the season slowed down?

A. Well, we stopped a couple of days a week, that is all. Say we had five day's work, we worked two and a half days instead of five.

Q. Did you ever tell some of the girls that there was not enough work, you would call for them?

A. I don't think I did. Not those that worked for me.

Q. So during the close-down of a couple of days, the girls were without work?

A. What do you mean by a close-down?

Q. You said that during the slow seasons you would close down operations.

A. That is right.

Q. Is that so?

A. Yes.

Q. And for those days that you would close down on your operations, you naturally let the girls go?

A. That is right.

Q. And has that been the practice with the company from the time it started activity out there in Somerville?

A. Well, not only—you mean since the company is in existence?

Q. Yes.

A. That is right, since I am with the company.

Q. The month of August, 1935 do you remember that month?

A. I do.

Q. Do you remember the month of September when there was a strike at the plant?

A. I do.

Q. Was the month of August, 1935 a busy or a slow season?

A. It was a slow season then.

Q. That month was a slow month?

A. That is right.

MR. GEROFISKY:

That is all.

TRIAL EXAMINER GATES:

I wonder if we want to start on the cross examination at this hour.

MR. HALPERN:

It is just this, if your Honor please. He is the only foreman down there, and we should like him to get away as soon as possible.

TRIAL EXAMINER GATES:

Off the record.

(There was a short discussion off the record.)

Cross Examination

BY MR. MOSCOVITZ:

Q. When you say, Mr. Ruby, that you did not discharge any of these people, that Mr. Gerofsky asked you about, do you mean that on the day they were last employed you did not speak with them at all about their having to leave?

A. Not as far as the Union activity is concerned. I spoke to them. I had to answer them questions of work or anything of the kind.

Q. But on the last day that these girls were employed, did you tell them at least there was no more work for them?

A. No, I did not.

Q. Are there any girls of the number that Mr. Gerofsky asked you about that you had to lay off?

A. The only girl there is Anna Santora. It was about ten minutes of ten, and why I told the girls

that I know that they are going out on strike at ten o'clock, and there is no use of giving her any work?

Q. You told her that?

A. Yes.

Q. Did you tell that to any other girls?

A. I did not.

Q. How did you know that the girls were going out on strike at ten o'clock?

A. I had heard it. I think we have had that in Somerset paper.

Q. You mean you read it in the Somerset Gazette that about ten o'clock of that particular day?

A. I don't remember.

Q. Just a minute. That the girls were going to go out on strike?

A. As I say, I don't recall that I did read it in that paper, but I think I did read somewhere that they are going out on strike at ten o'clock.

Q. At ten o'clock that morning?

A. Yes.

Q. Can you tell us where you read it?

A. No, I could not.

Q. Are you sure you did not hear it from someone?

A. I did. I must have heard it from somebody.

Q. Then, you did not read it?

A. I don't know whether I did read it or I heard it from somebody.

Q. Now, do you have any recollection as to who the person was from whom you heard this?

A. No, I have not.

Q. And was there a strike at ten o'clock?

A. There was.

Q. So you were right?

A. That is right.

Q. Now then, were there any other girls among those named by Mr. Gerofsky that you spoke with about their leaving the employ of the company?

A. What do you mean by leaving?

Q. Well, that there would be no more work for them, that things were slow, to take a week off or two weeks off?

A. Yes, I did.

Q. Which of these girls?

A. I did not say take the week off or the day off or anything of the kind. I used to tell those girls to come the next day, and if I have work I will give it to them.

Q. Are those the girls Mr. Gerofsky named to you?

A. That is Fay Katz—let's say, and—

Q. Let's take Fay Katz, for instance.

A. Yes.

Q. Do you recall when she was last employed by the company?

A. That is right.

Q. Did you speak to her on that day?

A. On that day.

Q. On the day when she was last employed?

A. On the day which she was last employed, I think I did. She asked me for work, yes.

Q. Do you remember that she asked you for work?

A. Yes.

Q. What did you say?

A. I said I have not any work.

Q. That is what you said?

A. Yes.

Q. Did you say anything else?

A. No, I don't think I did.

Q. What did she say, do you recall?

A. I don't know what she said. Do you mean the last day, the day when they went out on strike?

Q. The day when she last worked for the company?

MR. GEROFSKY:

Can you specify the date?

A. I don't understand that question.

MR. MOSCOVITZ:

I will have to go through the record and get it.

MR. GEROFSKY:

Why not take the last day she worked at the plant?

MR. MOSCOVITZ:

That is my question. But he does not remember.

A. Was it the question that the day she last worked in the plant?

BY MR. MOSCOVITZ:

Q. The day she last worked.

A. Did I speak to her?

Q. Yes.

A. I did.

Q. Now, do you remember anything else that you might have said to her, that you said to her at that time?

A. No, I don't.

Q. Do you recall what she said to you?

A. No, I don't.

Q. And after you told her that there was no more work she left?

A. Well, she did not leave. She was there in the shop for a time, and then she went away.

Q. That was the last you saw of her in the shop, is that right?

A. She came every day.

Q. Every day?

A. Every day.

Q. To apply for work?

A. Yes, to ask for work.

Q. Did she come to you every day and ask for work?

A. She did come to me sometimes, and I have foreladies.

Q. She never received further work, is that right?

A. Yes.

Q. Do you recall just what kind of work she was doing when she last worked for you?

A. Yes.

Q. What was it?

A. She was working on skirts.

Q. Were they winter skirts?

A. They were.

Q. You were making your winter season goods?

A. What do you mean?

Q. Were you making samples or were you filling orders?

A. I was making stock.

Q. To meet the needs of your winter season?

A. Yes.

Q. So that was your regular winter season, is that it?

A. Yes.

Q. And the winter season is not an off season, it is an on season, isn't it?

A. It is an on season.

Q. So that there is plenty of work to be done, isn't that right, for the girls?

A. What do you mean by that?

Q. It was not a slack season?

A. No, Mr. Moscovitz, at that time, you see we have had a slow season, and we have not had any skirts, we had a little skirts and then we started on a line of Ski suits. You see we had corduroys on which none of our girls ever worker before. You see. And as a rule when we have this, the better girls we give the work, and the help that does not know how to work at it, we lay them off for awhile until we break in the others, and then we call in the other help there to work.

Q. I understand. Is that what you did in this instance?

A. That is right.

Q. Now say Katz is an operator then who was let out, but someone else was taken on to do ski suits?

A. No, nobody was taken on. Only the girls, the better class of help.

Q. Were kept?

A. Were kept and made ski suits.

Q. When did you start to take people on again?

A. I did not take them on until after the strike.

Q. Not until after the strike?

A. That is right.

Q. So that from the time Fay Katz last worked for you until after the strike was over you did—

A. Not until after the strike was over. After the strike broke out.

Q. After the strike started?

A. That is right.

Q. No-one was taken on?

A. That is right.

Q. Do you recall how long a period of time that was?

A. Well, I will say about four weeks, I guess.

Q. So that in that approximate four week period, no new girls were taken on at all?

A. None.

Q. When the strike started, you did take on new girls, is that right?

A. That is right.

Q. Did you take on a new girl to do the kind of work that Fay Katz was doing?

A. I could not say exactly whether I took on a new girl to do the work Fay Katz had been doing as far as that is concerned, Fay Katz never worked on ski suits, so I could not say that.

Q. But did you take on new girls to work on ski suits?

A. I did.

Q. They never worked on ski suits either, did they?

A. Maybe they did.

Q. Answer me. Did the new girls you took on ever work on ski suits?

A. They did not work on ski suits, but let's say they worked on a line that is something like ski suits.

Q. What is that?

A. Let's say they worked in a factory of jackets or anything of that kind.

Q. Brand new girls?

A. Yes.

Q. Factory of jackets where, in Somerville?

A. In Somerville.

Q. What factory?

A. We have Alman there. He has a factory of about sixty machines.

Q. Who else?

A. We have dressmaking plants, not in Somerville, in Manville and Bound Brook.

Q. Did you get some?

A. I got ~~some~~ dress girls.

Q. Girls who had worked on a similar line?

A. That is right.

Q. Say Katz had worked also on skirts?

A. Not exactly on skirts. She worked on cotton work, slacks.

Q. That is the kind of work that should qualify a person to work on ski suits too, would it not?

A. I would say no.

Q. You would say an operator in that line of work could not become an operator and do an operator's work in ski suits?

A. Yes she could. I don't say she can't. Don't you see, the question of these here, when we started a line of ski suits you see, we have to start with the better help.

Q. I see.

A. You see, now until we were ready to put on let's say girls like Fay Katz, or any one of the kind, they went out on strike.

Q. If Fay Katz had not gone out on strike, would she have been taken on to do the new work?

A. Well, you mean because she was out on strike or anything of the kind?

Q. No.

A. Probably she would have been in time. I would not say No.

Q. You would not say No.

A. Yes.

Q. Would you have taken her on to do ski suit work?

A. I would in time.

Q. What do you say in time.

A. Why do I say in time?

Now, we will have, we will say different works in between those ski suits, and we will see how she works.

Q. You knew already for a year what kind of work she did.

A. That is just why I did not.

Q. You kept her during that whole year's time when she was not a good operator?

A. On skirts.

Q. Because you had sympathy for her family?

A. She did some work different from other operators in the shop.

Q. She was different from the others?

A. Not only her, there were about ten or twelve. We have them today in the shop.

Q. You laid them off too, when it is slack?

A. That is right. I would not say I laid them off. I kept them on say coats that has a lining. So you give it to the floor help. So if you have not got no lining, you couldn't give it to them.

Q. Was there work you took on which was the kind of work Fay Katz did?

A. At what time?

Q. After the strike started.

A. Yes.

Q. And was there an operator or were there operators who were employed to do that work?

A. Yes.

Q. So that that operator, or those operators were

employed on the job that previously was done by Fay Katz—

A. I would not say No.

Q. You would not say No?

A. No.

Q. All right.

Now, then the only reason why you did not ask Fay Katz to come back to do that work was because she was on strike, is that it?

A. I did not ask any one of them, not only Fay Katz.

Q. Now then, other girls outside of Fay Katz, did you speak with them too on the day that they last worked for the company and told them that you had no more work for them?

A. I never said to any girls that I have no more work for them.

Q. Well, you said it to Fay Katz.

A. Did I say to Fay Katz I have no more work for her?

Q. What did you say. Maybe I misunderstood her.

A. Nevertheless she went out on strike and I then did not speak to any of the girls.

Q. On the day Fay Katz last worked for the company, what did you tell her?

A. I told her to come the next day.

Q. Earlier in your testimony you testified you told her you had no more work.

A. I never said to any of these girls I had no more work for them. I told them to come the next day and I might give it to her.

MR. MOSCOVITZ:

Could the Reporter go back in the record and find that testimony?

(The Reporter read from the previous testimony as follows:

"Q. Did you take on a new girl to do the kind of work that Fay Katz was doing?

"A. I could not say exactly whether I took on a new girl to do the work Fay Katz had been doing. As far as that is concerned, Fay Katz never worked on ski suits, so I could not say that.

"Q. But did you take on new girls to work on ski suits?

"A. I did.")

MR. MOSCOVITZ:

That is not it. But never mind.

BY MR. MOSCOVITZ:

Q. Did you ever have any conversations at all with any of these girls that Mr. Gerofsky asked you about regarding the Union?

A. I did not.

Q. Did you ever tell any one of them that they should have nothing to do with the Union?

A. I never did.

Q. So that you never even went so far as to mention Union to any of one of the girls?

A. I never did anything of the kind.

Q. Now, you came to Somerville from New York, didn't you?

A. That is right.

Q. Were you ever a member of a Union in New York?

A. Yes.

Q. What Union?

MR. HALPERN:

I am going to object to all that line of questioning because I can't see that it is material to this case, whether he belonged to a Union before or not.

Furthermore, it is improper cross examination. It has no bearing. It is just going to prolong this hearing.

TRIAL EXAMINER GATES:

He may answer.

A. Yes.

BY MR. MOSCOVITZ:

Q. What Union?

A. Local 15.

Q. Of the International Ladies' Garment Workers' Union?

A. The International Ladies' Garment Workers' Union.

Q. The same organization that was organizing in Somerville, but a different Local?

A. Yes.

Q. Were you a member of it before you came to Somerville?

A. No.

Q. It was a long time ago?

A. Yes.

MR. GEROFISKY:

Mr. Examiner, will you note the objection with respect to this whole line of testimony?

TRIAL EXAMINER GATES:

It may be so understood, certainly.

BY MR. MOSCOVITZ:

Q. When you came to Somerville, did you come from the Lees Sportswear Company?

A. No, I did not. You mean when I came to Somerville? I did so.

Q. You had been employed by Lees Sportswear Company?

A. Yes.

Q. In what capacities?

A. Running the factory.

Q. In New York?

A. No.

Q. Where?

A. Long Island.

Q. Was that a Union shop?

A. No.

Q. Did you come to Somerville at the time the Somerset and Somerville Companies were started?

A. That is right.

Q. Is your job superintendent?

A. That is right.

Q. Now, when did you first learn of the International Ladies' Garment Workers' Union was in Somerville and were trying to organize your shop?

A. I can't understand you.

Q. When did you first learn that the Union was trying to organize the shop in Somerville?

A. When did I first learn? Or when did I first hear of the Union coming to Somerville to organize? Well, I would say ten or twelve weeks before the strike.

Q. Do you recall from whom you learned it?

A. No; I did not. Just a rumor, that is all.

Q. Did you speak with Mr. Fainblatt about it?

A. I did.

Q. Do you recall when that was?

A. When I spoke to Mr. Fainblatt? Occasionally.

Q. From time to time?

A. Yes.

Q. About the Union?

A. That is right.

Q. Was that before the strike?

A. It was.

Q. Before any of these girls were last employed by the company?

A. Before what?

Q. Before the last days these girls worked for the company?

A. Yes.

Q. And did you speak with Mr. Fainblatt about it after Mr. Fainblatt spoke with the union representatives?

A. Yes.

Q. Do you recall what your conversations were with Mr. Fainblatt about the Union?

A. He just told me that Mr. Posner was here and spoke to him about certain things, that is about all.

Q. Did you have anything to say about it?

A. No, I have not.

Q. Did you ever tell him what you thought he ought to do with the Union?

A. No, I never told him anything of the kind.

Q. Did he ever ask your opinion?

A. No, he did not.

Q. So your conversations were simply limited to your finding out what he was doing with Mr. Posner and about the Union?

A. Not exactly finding out. Just speaking from one man to another, that is all.

Q. Did you ever discuss the matter with your forelady?

A. With my forelady? Well, from time to time.

Q. Who was your forelady?

A. Mrs. Evans.

Q. Did you have any other forelady?

A. Not at that time.

Q. So there were no other persons who could classify as a boss outside of that forelady and yourself?

A. That is right.

Q. And Mr. Fainblatt over both of you?

A. Yes, that is right.

Q. What did you say her name was?

A. Mrs. Evans.

Q. Was she in charge of all the girls under you?

A. Not all. Part of them. She had a certain part.

Q. How many girls?

A. About fourteen.

Q. And were any of these girls that Mr. Gerofsky, asked you about girls that she was in charge of?

A. All of the girls, you mean any of these girls?

Q. Yes.

A. Yes. There was Anna Santora, as far as I can remember.

Q. Is that all? Fay Katz?

A. Fay Katz, that is right.

Q. Ethel Rice?

A. No.

Q. Ethel Rice would be under you?

A. No, Ethel Rice was not under me.

Q. Who was she under?

A. Mr. Fainblatt.

Q. How about Lorraine Heitz?

A. Lorraine Heitz I think was under Mr. Fainblatt.

Q. And Anna Santora you have already told us about?

A. Yes.

Q. How about Shoaka?

A. Shoaka was under me.

Q. Matteis?

A. Also me.

Q. Yemma?

A. I still can't recall that name.

Q. All right. I thought you could not recall Gecik before. Do you recall Yemma?

A. Did I recall her before?

Q. Did you recall Yemma?

A. I think, Yes.

Q. Now, are you sure?

A. I think I did.

Q. Well, if you are not sure, how could you have said to Mr. Gerofsky when he asked you if you did not discharge her?

A. As far as that is concerned, I did not discharge any of the girls in the shop. I said that before. None of these girls were ever discharged by me or by the forelady of the shop.

Q. No question in your mind now about any of the other girls?

A. Whether I discharged them?

Q. Whether you even know them.

A. More or less, I do I guess. After all, it was so long but I remember each one of them.

Q. More or less?

A. More or less.

Q. Now, when you spoke with your forelady about the Union, was it also at the time the Union was organizing?

A. We never spoke about it. From time to time she used to come over and tell me, "You know there is a rumor that the shop is going to be organized, and so on."

But that is as far as we went, and no further.

Q. Did she ever mention names to you specifically?

A. She never mentioned names.

Q. Did you ever mention any to her?

A. No.

Q. Did you know names?

A. Yes, we did know so far as the girls were concerned, I won't say no.

Q. You did know?

A. Yes.

Q. How did you know?

A. How did I know? Well, you can tell those things.

Q. How?

A. Each one tells,—each one tells you and the others comes and tells you.

Q. You found out from other workers who told you about it?

A. Yes.

Q. Do you recall who these other girls were?

A. No, not exactly.

Q. Can you name one?

A. No, I don't think I can.

Q. You mean would you rather not name the person, or don't you remember?

A. Well, it is not the question of naming the person. Really those girls are not with us any more, and that is about all I can say.

Q. Don't you remember the names now?

A. No, I don't.

Q. You mean all these girls who told you about the other girls are no longer with you?

A. What?

Q. Are no longer with you.

A. Not all of them. You mean those girls?

Q. That told you.

A. That told me about the others. Not all. Maybe I have one girl.

Q. Who is this one girl that would tell you about the Union?

A. I think her name was Vermilyea.

Q. Vermilyea what?

A. I don't know her second name.

Q. Is she still working for you?

A. No, she is not.

Q. Did she keep you advised of all the things that the Union boys and the Union girls were doing?

A. That is right.

Q. Would she tell you what would go on at the meetings?

A. She would from time to time. I don't know whether she did tell me the truth or not, but she used to come and tell me.

Q. Did she tell you that all during the period of time up until the strike took place?

A. Well, I would not say. For about a week or so.

Q. Did you learn from her that Fay Katz was active in the Union?

A. I have not learned from her anything of the kind.

Q. Now, you don't want to contradict yourself, do you?

A. I do not.

Q. Now, you told me that she told you all the things about the Union.

A. That does not mean to say I have learned anything from her. I have heard from her, that is about all.

Q. Heard what, about Fay Katz?

A. About Fay Katz, what is the difference Fay Katz or any of the other girls.

Q. No difference.

A. She used to come and tell me, this one and the other.

Q. She would tell you about particular individuals?

A. She would.

Q. You don't deny she told you about Fay Katz?

A. I do not.

Q. You don't deny she told you about these other girls Mr. Gerofsky asked you?

A. She did.

Q. She did?

A. Yes.

MR. MOSCOVITZ:

That is all.

Redirect Examination

BY MR. HALPERN:

Q. Did you solicit her to find these things out for you?

A. No, she used to come around and tell me, that is all.

MR. HALPERN:

That is all.

MR. MOSCOVITZ:

That is all.

TRIAL EXAMINER GATES:

Is it satisfactory to recess at this time?

MR. MOSCOVITZ:

I would like to ask a favor if I may on the record.

I have just received word an uncle of mine is on his death bed out at Habbonfield, New Jersey, and have asked that I come out there. I would like to go. I don't know if I will be back in the morning, but I assume that I will, if necessary. But I would rather adjourn over until Monday morning if it is satisfactory to everyone.

MR. GEROFISKY:

We have no objection.

In fact, we would like to accede to Mr. Moscovitz's request.

TRIAL EXAMINER GATES:

Off the record.

(There was a short discussion off the record.)

TRIAL EXAMINER GATES:

We will recess for a few minutes at this time.

(The hearing recessed for a few minutes.)

TRIAL EXAMINER GATES:

The hearing is adjourned until Monday, October 25th in this room, at ten o'clock.

At the request of Mr. Moscovitz, however, this time is subject to confirmation later this afternoon, in Mr. Moscovitz's office.

(Whereupon, at 1:20 o'clock p. m., October 22, 1937, the hearing was adjourned to 10:00 o'clock a. m. October 25, 1937.)

HEARING (Continued)

Room 942,
233 Broadway,
New York, N. Y.,
Monday, October 25, 1937.

The above entitled matter came on for hearing, pursuant to adjournment, at 10:00 o'clock a. m.

Before:

ROBERT M. GATES, Trial Examiner.

DAVID A. MOSCOVITZ, Esq., Attorney on behalf of the Board.

LEON GEROFISKY, Esq., (Central Bldg., Somerville, N. J.)

JOSEPH HALPERN, Esq., and T. GIRARD WHARTON, on behalf of the Respondents.

PROCEEDINGS

TRIAL EXAMINER GATES:

The hearing may proceed.

MR. GEROFISKY:

I will call Miss Recchia.

CARMELLA RECCHIA a witness called by and on behalf of the Respondents, and having been first duly sworn, was examined and testified as follows:

Direct Examination

BY MR. GEROFISKY:

Q. Please state your name.

A. Carmella Recchia.

Q. Where do you live?

A. The street and town?

Q. Yes.

A. 82 Second Avenue, Raritan, New Jersey.

Q. How long have you lived there?

A. Twenty one years.

Q. Are you working today?

A. Yes.

Q. Where?

A. Somerset Manufacturing Company.

Q. And how long have you been working there?

A. I believe I can't answer that question.

Q. Now, when did you first go to work for the Somerset Manufacturing Company?

A. That was two years ago.

Q. That is in 1935?

A. Yes.

Q. And were you working there before the strike activity?

A. Yes.

Q. How long before the strike activity were you working there, about?

A. About a year.

Q. And when the strike occurred, did you stop work?

A. Yes.

Q. Were you one of those who went out on strike?

A. Yes.

Q. How long were you away from the Somerset before you came back to work?

A. About seven months.

Q. Did you have employment between the time you walked out on strike and the time you went back again?

A. Yes.

Q. Where did you work?

A. At the Ivona Skirt Shop, in Plainfield, and a dress shop in Manville.

Q. How long did you work at the Ivona?

A. One month.

Q. How long did you work at the Manville?

A. Two weeks.

Q. Miss Recchia, did you join the Union, the International Ladies' Garment Workers' Union?

A. Yes, I signed a card.

Q. When did you sign a card?

A. August, the latter part of August.

Q. What year, do you remember, was it the same year of the strike?

A. Yes.

Q. 1935?

A. Yes.

Q. Now, where did you sign a card?

A. In Harmony Hall, Raritan.

Q. Do you remember the exact date when you signed that card?

A. I don't.

Q. Did you pay any dues to the Union?

A. No.

Q. Did you receive any compensation from the Union?

A. While I was on strike, Yes.

Q. What did you do in return for that compensation, did you picket?

A. I did.

Q. You had never signed a card until you attended that meeting at Raritan Hall—Harmony Hall in Raritan, is that right?

A. No. That is right.

Q. Now, were you called back to work at the Somerset Manufacturing Company plant, or did you go back voluntarily?

A. I was sent for, and I went back.

Q. You were sent for?

A. Yes.

Q. And who sent for you?

A. The foreman. One of the girls came to call on me and said the foreman asked for me.

Q. And that was after you had gone out on strike?

A. Yes.

Q. After you had signed a Union card?

A. Yes.

Q. And did you go to the plant?

A. Yes.

Q. Who did you see when you went back after speaking with that girl?

A. The foreman.

Q. Do you know the name of the foreman?

A. Mr. Ruby is what we called him.

Q. Mr. Ruby?

A. Yes.

Q. Were you immediately hired?

A. Yes.

Q. Did Mr. Ruby ask you if you were still associated with the Union?

A. No.

Q. Did anyone in the plant in a supervisory capacity ask you if you were still associated with the Union?

A. No.

Q. There were no demands made that you terminate your association with the Union, were there?

A. No, there weren't.

Q. Did Mr. Fainblatt ever ask you—Withdraw that. Do you know Mr. Fainblatt?

A. Yes.

Q. And do you know Miss Fainblatt, who is sitting on my right?

A. Yes.

Q. Did either one of those persons ever ask you to terminate your association with the Union?

A. No.

Q. Miss Evans, do you know her?

A. Yes.

Q. Did she ever ask you to terminate your associations with the Union?

A. No.

Q. At any time when you worked at the plant were you asked whether or not you were a member of the Union?

A. No.

Q. Now, have you been working steadily since you returned?

A. I have.

Q. Are you satisfied with the salary that you are receiving there?

A. I am.

Q. Were you satisfied before the strike with the salary?

A. Yes.

Q. And were the working conditions at the plant prior to the strike the same as the working conditions are at the present time?

A. Yes.

Q. And are the working conditions at the plant satisfactory to you today?

A. Yes.

Q. I am speaking, of course, with respect to cleanliness and light and air in the plant.

A. Yes.

Q. And would you say you were satisfied with the management and the supervision on the part of your supervisors prior to the strike and after the strike?

A. Yes.

Q. A number of girls remained in the plant on the 18th day of September, 1935 working when the strike was called, is that right?

A. Yes.

Q. And those girls continued working that day, is that right?

A. Yes.

Q. You know that?

A. Yes.

MR. GEROFISKY:

I think that is all.

Cross Examination

BY MR. MOSCOVITZ:

Q. Miss Recchia, when you went out on strike and went on the picket line, you weren't being paid for picketing were you?

A. No.

Q. Wasn't the relief money that you got from the money so much a week?

A. Yes, but we had to picket for it too.

Q. Yes. That was part of your activity while you were on strike was to picket, isn't that so?

A. Yes.

Q. Wasn't that part of your activity in order to try and win the strike was to picket and have signs and show the public what you were picketing about?

A. Yes.

Q. But you weren't hired by the Union to picket at so much a week, were you?

A. No.

Q. Now, when you went out on strike you went out on strike you went out with other girls for a certain reason, didn't you?

A. Yes.

Q. What was the reason, do you recall?

A. Well, it was not just because I might have

joined the Union. Most of them were from my home town, and I thought there would be trouble afterwards if I did not. I thought I would picket with them and see what would become of it.

Q. That was your reason?

A. That was my reason.

Q. Didn't you go out on strike to try and improve your pay and better yourself?

A. I was well satisfied.

Q. You were? So that you were just one of those who went out because you thought that if the Union would win then you would want to be with the Union?

A. Yes.

Q. And you had no question then about improving your own personal condition in the plant?

A. No.

Q. You are sure of that?

A. I am sure.

Q. How much were you making a week at the time you went out on strike?

A. I always averaged \$15.00 and over.

Q. \$15.00 and over?

A. Yes.

Q. Was that for a forty hour week?

A. Yes.

Q. Then you would always make \$15.00 per week for a forty hour week?

A. Yes.

Q. Did you work piece rate?

A. Yes.

Q. You did not get a regular salary, did you?

A. No.

Q. Well, if you worked piece rate, you did not always make \$15.00 a week, did you?

A. No, I did not make just \$15.00, but I was always sure to make \$15.00 or more.

Q. What was the least amount that you made piece rate per week?

MR. GEROFISKY:

On what?

MR. MOSCOVITZ:

Per week.

MR. GEROFISKY:

How many hours?

MR. MOSCOVITZ:

That is what I will have to ask her afterwards.

A. The least?

BY MR. MOSCOVITZ:

Q. Yes.

A. I remember making \$10.00 and \$8.00.

Q. How many hours would you work a week when you would make \$10.00 or \$8.00?

A. About fourteen hours or sixteen. That was when we weren't busy at all we would have to work for about five or six hours a day.

Q. What was your piece rate, do you remember? Did you get so much a dozen?

A. Yes.

Q. What was your piece rate, do you remember per dozen?

A. We did so many different things.

Q. You had a different rate for different things?

A. Yes.

Q. Do you remember what the various rates were before you went out on strike?

A. Different fronts. The front of the coat, I was a front maker, and used to get fifty-five cents for a dozen. They were all different.

Q. And since you have gone back to work, has the rate changed or is it the same?

A. Well, the styles changed.

Q. The styles have changed? But have the rates changed? Do you get more than you got before you went out on strike?

A. About the same.

Q. You still average the same money?

A. I don't work on a machine any more.

Q. What do you do now?

A. Forelady.

Q. When did you become a forelady?

A. Last December.

Q. December, 1936?

A. Yes.

Q. And how long was that after you returned to work?

A. About seven months.

Q. So that now you work on so much a week?

A. Yes.

Q. You get a regular salary?

A. Yes.

Q. How much is that?

A. \$17.00.

Q. And that is better than what you used to make before, isn't it?

A. Yes.

Q. Now, as a forelady you are in charge of certain girls, are you not?

A. I am.

Q. How many girls?

A. About twenty eight.

Q. So that today at the time that you are testifying here now, you are a person who is in a different position than you were when you originally went out on strike, isn't that so?

MR. GEROFISKY:

I object. I think that the testimony thus far will speak for itself.

TRIAL EXAMINER GATES:

She may answer it.

You may answer it.

MR. GEROFISKY:

Calling for a conclusion,

A. Pardon me?

BY MR. MOSCOVITZ:

Q. Let me ask you: So that today when you testify here now as a forelady, you are not considered among the workers in your plant as a regular worker. You are now somebody who is like a boss, isn't that true?

A. Yes.

Q. Who is your boss now?

A. Mr. Fainblatt.

Q. And no one else?

A. No.

Q. Mr. Fainblatt is your boss, and you are the boss over these girls that you told us about, is that right?

A. No, upstairs is Mr. Ruby. He tells us what to do.

Q. He is the one who is in charge of the plant?

A. Yes.

Q. And then your immediate boss is Mr. Ruby?

A. Yes.

Q. And then you are the immediate boss over these girls that you told us about?

A. Yes.

Q. Do you like being a forelady better than being a regular worker?

A. At times..

Q. More responsibility?

A. Yes.

Q. You have to work more with the bosses?

A. No, just teaching the girls and all that.

Q. But you have to discuss things more with the bosses?

A. Prices.

Q. And you have discussions, do you, with Mr. Fainblatt from time to time?

A. No.

Q. With Mr. Ruby?

A. With Mr. Ruby.

MR. MOSCOVITZ:

That is all.

MR. GEROFISKY:

That is all.

(Witness Excused.)

MR. GEROFISKY:

Mrs. Evans.

RUTH EVANS was called as a witness by and on behalf of the Respondents, and was duly sworn.

MR. GEROFISKY:

I am wondering if I might ask a question or two of the first witness.

TRIAL EXAMINER GATES:

Off the record.

(There was a short discussion off the record.)

(Witness Evans Excused.)

CARMELLA RECCHIA, a witness for the Respondents was examined and testified further as follows:

Redirect Examination

BY MR. GEROFISKY:

Q. Miss Recchia, Wanda Kelly was one of those who went out on strike?

A. Yes.

Q. She is working there today?

A. Yes.

Q. And Ethel Hicks, do you know her?

A. She is a purser, yes.

Q. She was one of those who had gone out on strike?

A. Yes.

Q. Has she returned to work there today?

A. Yes.

Q. Do you know Rose DeMatina?

A. Yes.

Q. Was she one of those who went out on strike?

A. Yes.

Q. Has she gone back to work today?

A. Yes.

Q. Yula Melewski, did you know her?

A. Yes.

Q. Was she one of those who went out on strike?

A. Yes.

Q. Is she working there today?

A. No, after she was married she quit working.

Q. Did she go back to work after the strike?

A. Yes.

Q. And you say she, Julia Melewski is not working there today, she is married?

A. Yes.

Q. She was not discharged, to your knowledge?

A. No.

MR. GEROFKY:

I think that is all.

(Witness Excused.)

MR. MOSCOVITZ:

I wonder if we could have the witness resume the stand, Mr. Examiner, I would like to ask her a few questions.

TRIAL EXAMINER GATES:

Very well.

CARMELLA RECCHIA resumed the witness stand, was examined and testified further as follows:

Cross Examination

BY MR. MOSCOVITZ:

Q. Will you tell us how you became a forelady?

MR. HALPERN:

I object to the question. It is not proper re-direct. We have gone into all this on cross ex-

amination, and now have just asked a few questions aside from this issue, and now we are going all over it again.

TRIAL EXAMINER GATES:

You may answer it.

A. Well, the only way that I know they judge by your work and whether you understand the work or not.

BY MR. MOSCOVITZ:

Q. That is the standard you think they go by?

A. Yes.

Q. Tell us the manner in which you became a forelady, who offered you the job, what was said, when it was.

A. Ruby. Well, they were starting up another plant upstairs, and were short a forelady. So they called me over—Ruby did, and he asked me if I would like to try it. So I did.

Q. Is that all Ruby said?

A. That is all he said.

Q. He said nothing else?

A. No.

Q. You did not say anything to him?

A. No.

Q. You are sure?

A. I am positive.

Q. Didn't he say anything to you about how much money you would make?

A. No.

Q. You did not ask him?

A. I did not.

Q. When did you learn about your increase in salary?

A. About the day before I was going to be paid.

Q. The day before?

A. Yes.

Q. Where did you learn it?

A. Right in the factory.

Q. Who told you?

A. Ruby.

Q. What did he say?

A. He told me that my salary would be \$17.00.

Q. Per week?

A. Yes.

Q. When was this in relation to the time that you were rehired?

A. When was I rehired?

Q. No, when was this that you became a fore-lady?

A. In December

Q. December?

A. The latter part of December.

Q. That was how long after you went back to work?

A. Seven months.

Q. After you returned to your job?

A. Yes.

MR. MOSCOVITZ:

That is all.

(Witness Excused.)

RUTH EVANS resumed the stand as a witness by and on behalf of the Respondents, and having been previously duly sworn, was examined and testified as follows:

Direct Examination

BY MR. GEROFISKY:

Q. What is your full name?

A. Ruth Evans.

Q. Where do you live?

A. Woodlawn Avenue, Somerville, New Jersey.

Q. How long have you lived there?

A. About twelve years.

Q. Are you working today?

A. Yes.

Q. Where.

A. Somerset Manufacturing Company.

Q. And how long have you been working there?

A. Since they opened the plant, 1934.

Q. And in what capacity are you working there?

A. Forelady.

Q. How long have you been a forelady?

A. Since about two months after I started to work, in 1934.

Q. Have you worked at other plants in and about Somerville?

A. I worked at one in Somerville. I worked in New York before.

Q. How long did you work there?

A. About three months.

Q. What was the name of it, do you know?

A. Zuckman.

Q. Z-u-c-k-m-a-n?

A. That is right.

Q. What do you have to say with respect to working conditions in and about the Somerset Manufacturing Company plant? Are they good or bad.

A. They are very good.

Q. And do you base your opinion or your answer on your experience at other plants?

A. Yes, I do.

Q. And the experience at the Somerset plant?

A. Yes.

Q. And what would you say the conditions at the plant were with respect to the treatment of the girls, the operators in the production department, good or bad.

A. They are all very good.

Q. And do you know a Mr. Posner of the International Ladies' Garment Workers' Union, do you know him?

A. I have heard of him, but I do not know him.

Q. Did you ever speak with him?

A. No.

Q. Now, in your position as a forelady, did you in July, August, and September, 1935 have authority to hire any help?

A. No, I did not.

Q. And did you in those months, 1935 have authority to fire or discharge any help?

A. No, we did not.

Q. Do you know Mary Marano?

A. Yes.

Q. Was she working at the plant in the month of August, 1935?

A. Yes, she was.

Q. Was she one of the girls who went out on strike?

A. Yes, she was.

Q. Did you discharge Mary Marano?

A. No.

Q. Did you ever speak to her about Union activity?

A. No, I never did.

Q. Did you ever demand any information of any girl with respect to Unions?

A. No.

Q. Did you know Fay Katz?

A. Yes.

Q. Was she working at the plant in August, 1935?

A. She was.

Q. About that month, did you discharge or fire Fay Katz?

A. No.

Q. And in the month of September, did you discharge Fay Katz?

A. No.

Q. Now, I am referring, Mr. Examiner, to page 266 and 267 of the transcript of record, proceedings: Mrs. Evans, Fay Katz has testified as follows:

"Q. Had Mr. Fainblatt spoken with you about the Union?

"A. No, he had not.

"Q. Before August 21st?

"A. No, he had not.

"Q. Any one of your supervisory employees speak with you about the Union?

"A. Miss Evans."

Q. Did you ever speak to Fay Katz about the Union?

A. No, I never did.

Q. And she refers to the date of August 21, 1935. Did you on that specific day speak with Fay Katz about the Union?

A. No, I did not.

Q. Did you on any day refer to the Union activities of Fay Katz?

A. No, I did not.

Q. Now, did you know Anna Santora?

A. Yes.

Q. By the way, going back a moment, was Fay Katz working as an operator under you?

A. Part of the time.

Q. And Anna Santora, was she an operator in the plant in June, July, and August, 1935?

A. She was.

Q. Did you ever speak to her about Union activities?

A. No.

Q. On page 304 and 305 of the transcript of record, is this.

Anna Santora has testified in these proceedings and I will read you the testimony with respect to her.

“Q. I see. You stated you were discharged on what day?

“A. September 18th, just before the strike. You see they thought I was going to blow the whistle for the girls to get out, and Mrs. Evans, she told me there would not be any more work to me because the girls next to me, told her that I told her that I was going to blow the whistle. So she got up and told the forelady, and I heard her, because I was in back of her.”

Did anyone tell you that Anna Santora was going to blow a whistle?

A. No.

Q. Did anyone tell you that any girl other than Anna Santora was going to blow the whistle?

A. No.

Q. Did you ever have any conversation of that sort?

A. No, I never did.

Q. Anna Santora goes on to say:

"Q. Who was the forelady?"

"A. Mrs. Evans.

"Q. Who was the girl?"

"A. Fanny."

Did you know a girl by the name of Fanny?

A. Yes, we had one.

Q. You had a girl working by the name of Fanny?

A. Yes.

Q. Specifically, did you ever speak with any girl in that plant by the name of Fanny about Union activities?

A. No.

Q. Or about blowing the whistle?

A. No.

Q. Did you ever tell Anna Santora that there was no more work for her?

A. I told her that there was no more work one day for her, that day.

Q. Do you remember what day that was?

I will put it this way: Was it the day of the strike?

A. I think it was.

Q. What time of the day was it?

A. When she finished a bundle in the morning, somewhere around half past nine or so, when she finished her bundle of work.

Q. Had you ever told any girl prior to that date that there was no more work for her?

A. For the day, certainly.

Q. Beg pardon?

A. For the day, Yes.

Q. Why did you tell Anna Santora that there was no more work for her when she finished her bundle?

A. Because her line of work, the girls had already taken it up. It was the last bundle there was of that work.

Q. Was that the reason why you told her there was no more work?

A. Yes.

Q. Did you discharge her?

A. No.

Q. In fact, you had no authority to discharge her?

A. I had no authority.

Q. Did you suggest to Ruby at any time, that Anna Santora be discharged?

A. No.

Q. Was that a common occurrence in the plant telling a girl there was no more work for her?

A. Just at slow times, but there would be work the next morning when there was work taken apart.

Q. What do you have to say with respect to that period of time in August and September, 1935. Was that a slow time?

A. It was, Yes.

Q. Now, at page 305 in the transcript of record, Anna Santora has testified:

"Q. You know that after she spoke to this girl she went over to Ruby?

"A. Yes. She was talking to me before that.

She told me, she said, 'Anna, I heard you was the one that started all this trouble here.' And she said, 'You went to Mr. Posner,' and she said, 'You. She said you was the one that went to Mr. Posner and told them.' "

Did you ever speak to Anna Santora about Mrs. Posner?

A. I never spoke to any of the girls about Mr. Posner.

Q. Did you say those things that I have just read to you?

A. No, I did not.

Q. Did any such conversation take place between you and Anna Santora at any time?

A. It did not at any time.

Q. Anna Santora was a good operator, wasn't she?

A. Yes.

Q. Was she listed as one of your best operators?

A. She was listed as a front maker, and that is considered about the best.

Q. Did she make good wages?

A. Yes, she did.

Q. And you gave her a lot of work to do from time to time?

A. We tried to treat them all alike, and gave equally all we had.

Q. Anna Santora did not walk out on strike that day, did she?

A. Why, No, she did not. Not at that time. She went out a few minutes before.

Q. And was that for the reason you assigned that there was not work left for her to do?

A. No.

Q. Why did she go out a few minutes before the strike?

A. Because there was not anything left that day for her?

Q. Did you ever speak to Anna Santora? Did you ever ask Anna Santora for any information concerning Union activity?

A. I did not.

Q. Did Anna Santora ever speak with you about the Union?

A. I went around there at one time when the girls were talking and she said that anyone that joined the Union was silly.

Q. Did she direct that statement to you or to the girls in general.

A. Well, I don't know whether she was speaking to me or not, but when I just went around there she looked up at me and said that.

Q. Do you remember when that was?

A. No, I don't remember exactly when it was. It was just previous to this talk about the strike.

Q. Now, when Anna Santora was told by you that there was no more work that day for her, did you give her any instructions with respect to returning for work the next day?

A. I said there would be work the next morning.

Q. Did Anna Santora return for work?

A. She did not.

MR. GEROFSKY:

Cross-examine.

Cross Examination

BY MR. MOSCOVITZ:

Q. Did you say that you worked in New York before you came to Somerville?

A. Yes, I did.

Q. Where did you work?

A. For Mr. Zinman in the Modish Form Brassiere Company.

Q. Brassiere Company?

A. Yes.

Q. Is that connected with the Universal Brassiere?

A. No, it was not. They have gone out of business since I left there.

Q. Gone out of business?

A. Yes.

Q. Did you work there, or were you forelady.

A. I worked there for seven years.

Q. As a worker?

A. Yes.

Q. Was that a Union shop or open shop.

A. It was an open shop.

Q. You have never belonged to the Union yourself?

A. No.

Q. When you worked for Mr. Zuckman in Somerville that was an open shop?

A. That was an open shop, Yes.

Q. Then you went to work for Mr. Fainblatt?

A. Yes.

Q. As I understand your testimony you had conversations with no-one about the Union?

A. No-one at all.

Q. No-one at all?

A. No.

Q. With neither the workers nor your superiors?

A. No.

Q. Including Mr. Fainblatt or Mr. Ruby?

A. Including Mr. Fainblatt and Mr. Ruby.

Q. Nor did they have such conversations with you?

A. No, they did not.

Q. Nor did any of the employees have such conversations with you?

A. No, they did not.

Q. Except for the time when you heard Santora say anyone who joined the Union was silly?

A. That was her statement.

Q. You heard no other conversation in the shop about the Union?

A. No, I did not really hear any conversation to speak of, because everybody kept quiet.

Q. Yes. And when you walked down in the shop at the time Santora made this statement, as I understand it she was talking to other girls?

A. She was talking, Yes.

Q. Was that during working hours?

A. No, it was just before working hours.

Q. You don't know then who they were talking about before you got there, do you?

A. No.

Q. So far as you know, she may have been trying to get these girls to join the Union, and when she saw you she made this statement to throw you off the track?

A. I have not any idea.

Q. Did you go to this group for any particular purpose?

A. I was carrying over a bundle of work to one of the girls.

Q. Now, when Mr. Ruby testified that there had been conversations between yourself and him about the Union, you say that you had no conversations with Mr. Ruby, or he had no conversations with you at all about the Union, you were incorrect, is that right?

A. Well, about the Union, we never spoke about the Union. It was the girls.

Q. The girls and their relation to the Union?

A. He said that the girls were talking about the Union.

Q. Yes.

So that you did have conversations with Mr. Ruby about the Union?

A. Well, if you want to put it that way.

Q. So you would change your former testimony on that point, would you not?

A. Well, he did not have anything to say regarding the Union, only just that the girls were talking about the Union.

Q. Yes.

So that there were conversations about the girls, and their relationship to the Union, is that it?

A. The day before the strike, Yes.

Q. The day before the strike?

Now, at no other time?

A. No.

Q. Are you sure of that?

A. Yes.

Q. Tell us how it was that you and Mr. Ruby discussed this question the day before the strike.

A. Well, I don't remember just how it came about, but, of course, there was a lot of talk around, all the girls at that time.

Q. Around where?

A. Around the girls. They were all talking at that time.

Q. How long had this talk been going on prior to the day of the strike, if you remember.

A. I don't remember just how long it was. It was just a few days.

Q. A few days?

A. Yes.

Q. Did you know in those few days who the leaders among the girls were?

A. No.

Q. Did you know that Fay Katz was active?

A. No.

Q. Did you know that Santora was active?

A. No, I did not.

Q. Did Mr. Ruby tell you which girls were active?

A. No, he did not.

Q. Did you know that a certain girl was bringing information to Mr. Ruby about the activities of the girls?

A. No, I did not.

Q. Now, how did you find out that these girls were talking Union in these few days before the strike?

A. Well, I don't remember. They said there was someone there at the office about the Union.

Q. Who said?

A. One of the girls was speaking, but I don't remember which one.

Q. Do you recall where it was that she was speaking about it?

A. No, I don't recall just where it was.

Q. Do you recall who it was?

A. No, I don't.

Q. Do you recall any more of the details of the statement made by this girl?

A. I don't recall just what she said.

Q. Did Mr. Fainblatt tell you subsequently that a Union man had been in to see him?

A. No, Mr. Fainblatt never spoke to me about it.

Q. Did Mr. Ruby tell you?

A. I don't remember that he did. It was just the day before. He may have mentioned when he spoke of it, but I don't remember what he said about it.

Q. You just reflect for a moment, and try to refresh your recollection on the question of whether or not Mr. Ruby told you that a Union man or a representative had been in to see Mr. Fainblatt.

A. I don't remember Mr. Ruby telling me that. I can't remember.

Q. Did you know from anyone else that this Union representative had been in to see Mr. Fainblatt?

A. Only as a rumor. I did not really know. I had not seen him.

Q. As a forelady at that time, were you in charge of a number of girls?

A. Yes.

Q. How many?

A. Fourteen.

Q. And that number increases with the increase in production, is that so?

A. That is right.

Q. What is the greatest number that you have ever had under your jurisdiction or supervision?

A. Well, at the present time it is about thirty.

Q. Now, at that time when you had fourteen working under you, Mr. Ruby was your immediate superior?

A. He was.

Q. And did you have to meet with him daily to discuss the work that the girls would have?

A. Why, as the girls finished their work he tried to help us, the best he could:

Q. He was the man with whom you were in constant contact?

A. That is right.

Q. Would you see him daily?

A. Oh yes.

Q. Talk with him daily?

A. Yes.

Q. About all matters pertaining to your work?

A. Yes.

Q. Now, do you say—I want to get it clear for the record, that at no time before the days immediately preceding the strike, did Mr. Ruby speak with you or you with Mr. Ruby about the Union?

A. I don't recall any.

Q. Well, would you say that he did not, or would you say that you did not?

A. I don't remember of him talking about the Union to me. And I know I did not.

Q. Now, when you say that you had no authority to hire or fire help, do you mean that you can't on your own power give a person the job.

A. No, I could not.

Q. And you can't on your own initiative actually

discharge a person permanently from the employ of the company?

A. No.

Q. Can you recommend the discharge of persons?

A. Well, I never did.

Q. Never have?

A. No.

Q. Have you ever told a girl that there was no more work for her on a particular day?

A. Yes.

Q. You can do that?

A. Yes.

Q. And have you ever told a girl that, and never re-employed her?

A. No.

Q. So that in every instance where you have told a girl there was no more work for her, she has subsequently been re-employed?

A. Sure.

Q. What?

A. Just when the work gives out of a certain type, she is supposed to come in the next day, that is all.

Q. When work slacks off, or for some other reason there is no work for a girl, you yourself can tell her, can't you, there is no more work for you, you go home?

A. Just for that day, that is all.

Q. It could be for two or three days, if there is no more work?

A. It has never happened to be two or three days.

Q. You mean there has been such production in this plant that you have never had a girl go out of the plant for more than one day?

A. The girls I have had have always been back the next day. Always the front makers, those girls.

Q. So there has always been a constancy, and such uninterrupted of production—

MR. GEROFKY:

I object to that. This witness is saying one thing, and Mr. Moscovitz is saying another thing. There is no testimony about production here. If he is on the practice that existed between Mrs. Evans, the witness, and any girl that she told to leave for the day, there is no more work for her, all right. But if he wants to go into production, I submit this witness knows nothing much about production, and has not been asked questions about it.

MR. MOSCOVITZ:

Will Mr. Gerofsky agree there should be stricken from the record his examination of this witness on whether or not there was slow production, or a lot of production during the months of August and September.

MR. HALPERN:

We have not mentioned that with this witness.

MR. MOSCOVITZ:

Oh, yes. Mr. Gerofsky asked this witness whether or not in the months of August and September work was slow. That, it seems to me, is a matter of production. If Mr. Gerofsky will do that, I will withdraw my question. If he doesn't, I submit my question is proper on cross examination.

MR. GEROFKY:

I stand on my objection.

TRIAL EXAMINER GATES:

Inquire.

MR. GEROFISKY:

So far as this witness is concerned, she is testifying to a practice that has been carried out at that plant, that if a girl had no—if there was not sufficient work in that particular girl's line, on any given day the girl would be told to come back another day. It so happened the girls she spoke to would return a subsequent day, and there was work again for them.

MR. MOSCOVITZ:

That may be true. That is one point. Of course, the other point is the accuracy of her statement that during the month of August and September business was slow.

TRIAL EXAMINER GATES:

Go ahead.

BY MR. MOSCOVITZ:

Q. Then, as I understand your testimony during the months of August and September work was slack?

A. Well, I can't say just exactly. I know right at that time, at the time of the strike there was not a lot of work to be given out, right those few days. I do remember that.

Q. So that in the few days immediately preceding the strike work became slow, is that what your testimony is?

A. Yes.

Q. But that before those few days there was plenty of work for the girls?

A. Well, I don't know just exactly how much. I know they were kept busy.

Q. Kept busy. And you are sure of that?

A. Well, as much as we had was divided among the girls.

Q. And it was only then in the few days preceding the date of the strike that work began to slacken off, right?

A. No, I could not say that.

Q. Well, now I thought that is what you had said. Now if you want to change that testimony do it now.

MR. GEROFSKY:

I don't think this witness wants to change any testimony, Mr. Examiner. What this witness wants to do is to explain herself.

BY MR. MOSCOVITZ:

Q. If you want to explain your statements, you do that now. I will permit you.

A. Well, whenever there was a slackness of the work which often occurs in most any business, the work is always divided among the girls equally. And when one certain line of work had given out those girls were told to come the next day when the other lot was started.

Q. That is the practice, isn't it?

A. Yes.

Q. That practice then was invoked in this plant in the few days preceding the strike?

A. It has always been a practice, Yes.

Q. Except for those few days preceding the strike all the girls were kept working, isn't that it?

A. Why, it was always the same. Not those few days. Those few days were no different from any other day.

Q. I understood you to say in the few days be-

fore the strike the work slowed down and girls had to be let go.

A. No, I don't think you understood me right.

Q. I see. Let me ask you all over again, since there has been some misunderstanding between us. When did work become slow in August and September?

A. Well, I don't remember just exactly how much work we had at any day, that is quite a long time ago to remember just how we worked it.

Q. Do you remember that throughout the entire months of August and September work was slow?

A. Well, I would not say that it was slow through all the months, but I do remember that there were times when it was slow.

Q. Now, do you remember when those times were? When it was slow in those months?

A. No, I can't recall just exactly.

Q. So that when you testified in the months of August and September business was slow, that statement is not entirely accurate, is that right?

A. All right. I don't remember just exactly how much there was at any one day.

Q. All right. On this question of work, had you ever before told Miss Santora that there was no more work for her on that day, that she should go home?

A. Many times, Yes.

Q. So that it was not uncommon for you to tell Santora to go home, that there was no more work?

A. It was not uncommon to tell any girl that.

Q. I am talking about Santora. Had you ever told her to go home because of lack of work?

A. Yes.

Q. I know this has been a long time ago, but do you recall when the last time was that you told Santora that before the day when she actually went home which was the day of the strike?

A. No, I can't remember any dates. I would not be able to remember them.

Q. That would be a matter of record, is that it?

A. That would be shown on her time card when she finished.

Q. Do you recall who gave Santora her work that day when she was last employed?

A. I did.

Q. Do you recall what kind of work it was?

A. As I remember, I think it was—I have forgotten just exactly what we were working on, but as I recall it now, I think it was skirts. I am not sure.

Q. Did you give her a bundle of work that morning?

A. Yes.

Q. Do you recall what time of the day it was when you spoke with her about going home?

A. I don't recall exactly what time it was. It was some time in the morning. I know when she had finished her work.

Q. Was her job completed when you spoke with her?

A. Yes.

Q. Had she come to you for more work?

A. Yes.

Q. What did you say to her?

A. I said there would be work in the morning.

Q. What kind of work?

A. Well, the regular work.

Q. Why wasn't there any work then? Why would there be work in the morning and not at that time?

A. Because we had not started another lot. There was not a lot ready at that time.

Q. Another lot of skirts you mean?

A. Yes.

Q. What did she say when you told her that?

A. She did not make any reply at all.

Q. Did you tell any other girls at that time that they should go home and that there would be work for them in the morning?

A. I am not sure whether there was anyone else who got through at that time or not. I know if they were, that line of work had given out.

Q. Fanny, what kind of work did she do?

A. I think she was at that time—now it is changed, but at that time I think she was putting belts on the skirts.

Q. Did she work next to Santora?

A. Yes.

Q. Did she work on the same bench?

A. Yes.

Q. Were they partners?

A. No, I would not say they were partners.

Q. Do you remember what Fanny's last name was?

A. Ackerman, I think.

Q. Fanny Ackerman?


A. Yes.

Q. Is she a Somerville girl?

A. I think she is a Plainfield girl.

Q. Does she still work for the company?

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A. Yes.

Q. What does she do now?

A. She is still on a machine.

Q. What kind? The same kind of work? Is she an operator?

A. She is an operator.

Q. Did she go out on strike?

A. No.

Q. She worked all during the strike, didn't she?

A. Yes.

Q. Steadily? She was not laid off?

A. No, she was not laid off.

Q. Do you know how long Fanny has been working for the company?

A. I don't remember just how long it is.

Q. You did not get her her job, did you?

A. No.

Q. Do you know her at all after working hours?

A. No, I don't.

Q. How did she tell you that she lived in Plainfield, or is it something you just found out from the record.

A. Well, I know she drives a car from Plainfield. She has a Plainfield license on it.

Q. Was she doing the same kind of work on the day Santora was told to go home that Santora was doing?

A. No, she was putting the belts on.

Q. Had you given her work that day too?

A. Yes.

Q. Do you recall whether or not you talked with Fanny that morning?

A. Nothing other than the work, nothing except in regard to the work.

Q. That may be so. You do recall then that you did speak with Fanny that morning?

A. Just in regard to her work, that is all.

Q. Do you recall when you spoke with her in relation to the time when you told Santora that there was no further work for her?

A. I did not speak with Fanny about that.

Q. You did not speak with Fanny about her work?

A. About her own work. Yes.

Q. That is right. Now, when did you speak with Fanny about her own work in relation to the time when Santora was finally told that there was no work, no more work for her? Do you understand my question?

A. No, I do not.

Q. Tell me when it was that you spoke to Fanny about her work?

A. Well, I don't understand just exactly what you mean by that.

Q. You said you spoke with Fanny about her work.

A. You are talking to the girls constantly about their work. When you are giving them work, you are watching their work, you are speaking to them constantly really, not in specified times.

Q. Were you speaking then with Fannie that morning constantly about her work?

A. Well, at different times you would speak to a girl about work. No more Fanny than any girls.

Q. Was Fanny a member of the Union?

A. I do not know.

Q. She never told you?

A. No, she did not.

Q. Did Fanny ever speak with you about the Union?

A. No, she did not.

Q. Nor you with her?

A. No.

Q. Did Fanny ever tell you that the girls were contemplating going on strike?

A. No, she did not.

Q. Did you know that the girls were contemplating going on strike that day?

A. That day, Yes, we had heard it that day.

Q. From whom did you hear it?

A. I said before I did not remember just exactly who it was that spoke of it.

Q. Was it one of the workers?

A. I don't remember. I don't remember who it was.

Q. Are you sure it was not Fanny?

A. No, I know Fanny was not talking to me.

Q. Are you sure it was not Fanny?

A. Yes, I am sure it was not.

Q. How are you sure it was not Fanny when you don't remember who it was who told you.

A. Well, I don't remember.

Q. So that it might have been Fanny?

A. I would not say it was Fanny.

Q. You did not say it was, would you say it was not Fanny?

MR. GEROFKY:

I submit this witness has endeavored to answer. She has given the best of her recollection. She says she can't recall.

MR. MOSCOVITZ:

If she says she can't recall whether it is

Fanny or anyone else, all right. I did not understand that to be her answer.

BY MR. MOSCOVITZ:

Q. Is that your answer?

A. I said I did not remember who it was that spoke to me about it.

Q. So that when Anna Santora testified that Fanny had a conversation with you about the strike on that day, you can't say, can you, that Santora's testimony on that point is not accurate, can you?

A. I don't recall any such conversation.

Q. You can't say that that testimony by Santora is inaccurate, can you?

MR. HALPERN:

If it please the Court, I object to the question and ask Mr. Moscovitz to read the entire testimony of Santora, because there is something in that answer which will refresh this witness's recollection, that she did not speak to Fanny.

MR. MOSCOVITZ:

I will read it.

BY MR. MOSCOVITZ:

Q. The answer Miss Santora gave, Miss Evans, is this: It is on page 304 at the bottom.

"September 18th, just before the strike, see, they thought I was going to blow the whistle for the girls to get up and Mrs. Evans, she told me there would not be any more work for me because the girls next to her told her that I told her she was going to blow the whistle, so she got up and told the forelady, and I heard her because I was in back of her.

Q. Who was the forelady?

A. Mrs. Evans.

Q. Who was the girl?

A. Fanny."

A. I don't remember. I never heard anything about a whistle I know that. It would have sounded ridiculous to me.

Q. You never heard anything about a whistle?

A. No.

Q. Would you say that Fanny on that day did not tell you that the girls were going on strike?

A. Well, I don't remember who spoke of the strike, but I do remember that no-one said that Anna Santera was called out on strike, because I had no idea of it.

Q. You just don't remember then about the whistle?

A. I don't remember anything about the whistle at all.

Q. Is it the practice for the girls in your plant to come back themselves after they have been told to go home, or is it the practice for you to say go home, and we will call you when we want you.

A. No, the girls always come back the next day.

Q. Yes. But what is the practice in that regard, is it that they always come back?

A. Yes.

Q. Is there any practice that you tell the girls when they go, girls, go home, we have no more work for you, it may be a day or it may be two. But we will get in touch with you when we have work.

Do you tell them that?

A. No.

Q. Never?

A. I have never had that happen.

Q. What?

A. There are none of my girls that ever had to

be sent home that way. Those girls are all front makers and they all did their share of the work.

Q. How long had you known Fay Katz? That is, before she was finally last out of the employ of the company?

A. I don't remember how long she did work there.

Q. She worked under you, didn't she, at the time she was last employed?

A. Only just the part of the time, that is all.

Q. Was she working for you the last day she worked there?

A. No, I don't think she was. As I remember, I don't think she was. I am not positive.

Q. Did you tell her that there was no more work for her?

A. No, I don't remember telling her that.

Q. You don't recall that?

A. No, I don't.

Q. As I recall your testimony, you testified that you did not speak with her at any time about the Union?

A. No, I never spoke with Fay Katz.

Q. You never spoke with her at all?

A. I don't remember speaking with Fay Katz anyway. She was not really one of my girls that I took care of most of the time.

Q. Let me ask you whether or not you ever attended any meetings where the Union question was discussed.

A. No, I did not.

Q. Either in or out of the plant?

A. No, I did not.

Q. You were in the plant at the time Mr. Hawley spoke, weren't you?

A. Oh yes. Mr. Hawley came in and spoke.

Q. The Mayor?

A. Yes.

Q. The Sheriff?

A. Yes, they were all there speaking.

Q. That was sometime before the strike, wasn't it?

A. I don't remember just when it was.

Q. It was before the strike though, wasn't it?

A. Yes, I think it was.

Q. Did you attend those meetings?

A. Well, I was there, Yes.

Q. Did you have any thing to do with getting the girls to go in to hear the speeches?

A. Well, it was given right where the girls were working.

Q. Did you turn the power off or did someone else do it.

A. I don't remember whether the power was turned off or whether it was after work. I don't remember just when it was.

Q. But you were there.

A. I was there.

Q. Did you know these men were coming?

A. No, I did not.

Q. So it was unknown to you when they came in that they were going to speak to the girls?

A. Yes.

Q. Weren't you notified by anyone before to see to it that the girls were there?

A. No, I was not.

Q. Weren't you notified by anyone before that your production would be stopped or interfered with by this speech, and you should make preparation?

A. No.

Q. How did you first learn that they were going to be there for the purpose of making a speech?

A. When they came in.

Q. Mr. Fainblatt came in with them, didn't he?

A. I think Mr. Fainblatt came up.

Q. It was upstairs?

A. Yes.

Q. On the second floor?

A. On the second floor.

Q. How about the people who were on the first floor, weren't there people working on the first floor?

A. There may have been a few girls trimming, I am not sure.

Q. Did you go down to get them to come up?

A. No.

Q. Was Mr. Ruby up there too?

A. Yes.

Q. The whole shop then, is that it?

A. Yes.

Q. Did you have anything to say at that meeting?

A. No, I did not.

Q. Then, you knew at that time that there was some Union problem in the plant, didn't you, at the time of these speeches?

A. Well, I could not say that I knew there was a Union problem. I did not exactly know.

MR. MOSCOVITZ:

That is all.

TRIAL EXAMINER GATES:

We will take a short recess.

(The hearing recessed for a few minutes.)

(Witness Excused.)

MR. GEROFISKY:

I will call Miss Fainblatt.

MARJORIE FAIBLATT resumed the stand as a witness by and on behalf of the Respondents, and having been previously duly sworn, was examined and testified as follows:

Direct Examination

BY MR. GEROFISKY:

Q. What is your full name?

A. Marjorie Fainblatt.

Q. And where do you live, Miss Fainblatt?

A. Ridge Road, Douglaston, Long Island.

Q. Were you ever associated with the plant in Somerville known as the Somerset Manufacturing Company?

A. Yes.

Q. In what capacity?

A. As the owner.

Q. Did you establish that plant as the owner?

A. I did.

Q. And when was that?

A. About the end of August, 1935.

Q. '35?

A. '34, rather.

Q. Now, in establishing out there in Somerville the Somerset Manufacturing Company, did you file a trade name certificate?

A. I did.

Q. One with the County clerk of the County of Somerset and the other a copy, with the Secretary of State of the State of New Jersey?

A. I believe so.

Q. Were you the sole owner of that business?
Known as the Somerset Manufacturing Company?

A. I was.

Q. Was there at the time that you established
in August, 1934 another plant operation in the same
building?

A. There was.

Q. And do you know the name of that operation?

A. Somerville Manufacturing Company.

Q. And do you know who the owner of that
plant was?

A. Benjamin Fainblatt.

Q. Do you know whether or not there was a
trade name certificate filed with the County Clerk
and the Secretary of State?

A. I believe so.

Q. And did such trade name certificate, to your
knowledge bear the name of Benjamin Fainblatt
as the owner of the Somerville Manufacturing Com-
pany?

A. It did.

Q. Was that established before you came there?

A. It was.

Q. How long before you went into Somerville
was the Somerville Manufacturing Company there?

A. Oh, just a few weeks before.

Q. And that was in the same month of August,
1934?

A. I believe so, Yes.

Q. Now, what did you manufacture at the Som-
erset plant?

A. Sportswear.

Q. And was your operation in that plant in conjunction with the Somerville Manufacturing Company, the same machinery?

A. The same machinery, Yes.

Q. Who owned that machinery?

A. I did.

Q. Was the Somerville Manufacturing Company using that machinery before you came out there?

A. They did.

Q. Did Benjamin Fainblatt have any association with the Somerset Manufacturing Company?

A. Only as my manager.

Q. He was not the owner of the Somerset?

A. He was not.

Q. Did he operate on the premises there as your manager?

A. He did.

Q. Did you visit the plant?

A. I did.

Q. How often?

A. On the average of once a week.

Q. And did you do any work when you went out there?

A. Just what do you mean?

Q. When you visited out there, what did you do?

A. Examine to see whether my work was being taken care of properly.

Q. And when you started the Somerset Manufacturing Company, did you have a record of the number of employees you had?

A. Yes, in the payroll books.

Q. And is that book here?

A. I believe it is.

Q. How many employees did you have to commence with?

A. Thirty, I have here.

BY MR. MOSCOVITZ:

Q. What is that date?

A. This says August 25th.

BY MR. GEROFKY:

Q. What year?

A. 1934.

Q. And are you the owner of the Somerset Manufacturing Company today?

A. No, I am not.

Q. Have you disposed of your interest in the Somerset?

A. I have.

Q. And when did that take place?

A. At the beginning of the year.

Q. Do you remember the month?

A. January.

Q. Who became the owner?

A. Benjamin Fainblatt.

Q. Was there a bill of sale given?

A. There was.

Q. And was there a purchase price paid for it?

A. Yes, there was.

Q. By Benjamin?

A. Yes.

Q. And you have no connection as an owner with the Somerset Manufacturing Company today?

A. I have not.

Q. That status has been so since January, 1937?

A. That is right.

Q. Did Benjamin have any association as an owner in the Somerset from the date of its founding to January, 1937?

A. He did not.

Q. You stated that the Somerville operated at the same time, and in the same plant as the Somerset operated?

A. That is right.

Q. Were there two separate payroll books, each company maintaining its separate payroll?

A. There was.

Q. Were the funds of the Somerville Company mingled with the funds of the Somerset at any time?

I mean, did you establish separate accounts; the Somerset had its own account, and the Somerville having its own account?

A. Yes.

Q. With respect to the pay, did the Somerset make any payments of wages at any time in behalf of the Somerville Manufacturing Company account?

A. Not that I know of.

Q. Well, did it?

A. No.

Q. And did the Somerville Manufacturing Company then owned by Benjamin Fainblatt ever pay any of your employees who worked, if they did, for the Somerset?

A. They did not.

Q. They were separate establishments entirely, is that so?

A. Right.

Q. Were they working on different types of garments?

A. Yes, in a way.

Q. Now, Miss Fainblatt, how long did the Somerville Manufacturing Company operate?

A. Until February, some time in February.

Q. What year?

A. 1935.

Q. Did it discontinue business activity at that time?

A. It did.

MR. MOSCOVITZ:

At Somerville?

MR. GEROFISKY:

Yes.

BY MR. GEROFISKY:

Q. Do you know that of your own personal knowledge?

A. My own personal knowledge, Yes.

Q. You have seen the books?

A. Yes.

Q. Do you take care of the books for your father from time to time?

A. Yes. I don't know just what you mean did I take care of them.

Q. Do you make entries and check entries in the books, supervise the management of those books?

A. The accountant took care of the books, so far as the payroll.

Q. In your own business, did you?

A. So far as the payrolls are concerned.

Q. Do you have the record of the Somerville Manufacturing Company that would indicate the last payroll it had?

A. I think so.

It was February 8, 1935.

Q. Are there any other payroll entries after that date?

A. Not beyond that date.

Q. And the reason that you assigned was that the plant discontinued business?

A. Yes.

Q. And upon determination of activities by the Somerville, did Benjamin continue as the manager of the Somerset plant for you?

A. He did.

Q. Was he engaged as a regular employee?

A. As a manager, he would be.

Q. Did he receive a salary from you?

A. He did.

Q. Miss Fainblatt, have you ever spoken with Mr. Harry Posner with respect to Union activities at the Somerville Manufacturing Company plant?

A. I did not.

Q. Did Mr. Posner ever communicate with you?

A. He did not.

Q. Did any person speak with you—
Withdraw that.

To your knowledge, was an election ever held at the plant of the Somerset Manufacturing Company to determine for the purpose of selecting a representative by the employees?

A. There was not.

Q. Now, going back to August 14, 1935, the week ending August 16, 1935, how many employees did you have in that week?

MR. MOSCOVITZ:

That is in what, the Somerset?

MR. GEROFKY:

In the Somerset. There is no other company in existence.

I believe the record will indicate a stipulation that the Somerville went out of business in February 1935. Also your intermediate report.

A. Fifty eight at the time.

BY MR. GEROFISKY:

Q. Fifty eight employees?

A. Yes.

Q. Are you including in that list those persons who are engaged in an executive capacity or supervisory capacity?

A. No, I am not.

Q. And the following week, how many were employed?

MR. MOSCOVITZ:

Just a minute, before you answer.

Off the record.

(There was a short discussion off the record.)

TRIAL EXAMINER GATES:

On the record.

BY MR. GEROFISKY:

Q. That is the week ending August 23rd?

A. About sixty.

Q. Sixty?

A. Yes, sixty.

TRIAL EXAMINER GATES:

Let's get those two dates straight.

The first one you testified to was what?

MR. GEROFISKY:

The week ending August 16th.

A. August 16th, I believe.

MR. GEROFISKY:

And the second is the week ending the 23rd.

BY MR. MOSCOVITZ:

Q. Does this last figure exclude supervisory employees?

A. Yes.

Q. Foreladies and people of that sort?

A. Yes.

BY MR. GEROFSKY:

Q. Sixty?

A. Yes.

TRIAL EXAMINER GATES:

I think this is all in the record, unless you just want to straighten out something. It has all been covered in considerable detail by photostatic copies, by, I imagine, the same records Miss Fainblatt is testifying from, and also the testimony of Mr. Fainblatt.

MR. GEROFSKY:

Of course, Mr. Fainblatt was the Board's witness. Here we have the owner of the plant with the records, and I am merely asking for the numbers.

I am not going through the names or anything. In view of a stipulation made between counsel of the Board and myself that the photostatic copies be kept out of the printed record, I would like to have these numbers in the record.

TRIAL EXAMINER GATES:

Well, if you are going to put it in this way, irrespective of the stipulation, I will keep the record open, and we will put in the photostat sheets which are already exhibits.

I don't think the testimony as to the numbers mean anything without reference to names and jobs they were on.

As I recall those payrolls, they show people on the payrolls who did not work and that sort of thing.

MR. GEROFSKY:

I would like to get the numbers in the record. There is nothing in this transcript of record to indicate the number of employees so as to really determine whether or not there were a majority of the employees who went out or who joined the Union, how long they had been employed, whether or not there was just one day.

TRIAL EXAMINER GATES:

Mr. Fainblatt testified there were sixty-one employees during the week ending August 16th, plus a bookkeeper, two cutters, and one finisher or something like that, and five general workers.

He gave testimony on the number of employees for those six weeks.

If you are going to go into that, I think we ought to check the testimony there and see if you wish to let that stand or do you want to put in some more. I just don't want to have the record cluttered up here.

MR. HALPERN:

Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER GATES:

On the record.

If you will look in Mr. Fainblatt's testimony, beginning at page 392, you will find in those pages and following he testifies as to this same line of testimony. And if you wish to contradict that testimony, I will consider that.

On the other hand, if that is substantially accurate, I see no point in going on through it.

It has all been covered in considerable detail, in discussion as to the jobs and the number of employees.

MR. GEROF'SKY:

Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER GATES:

On the record.

I don't intend to take cumulative testimony on this point. That is my only contention. If you wish to make an offer of proof, I will consider that. But this has already been covered in great detail, and if there are inaccuracies there, I am perfectly willing to have them corrected.

But I don't see any point in going clear over this again.

MR. GEROF'SKY:

Are you ruling in the matter to prohibit us from offering this testimony?

TRIAL EXAMINER GATES:

I think my statement is clear. I don't intend to take purely cumulative testimony.

MR. GEROF'SKY:

I submit it is not cumulative. In the first place, Benjamin Fainblatt has not been called as a witness by the Respondents. He was subpoenaed here by the Board to testify in the Board's behalf, and with respect to Benjamin Fainblatt's testimony, that he was not in charge of the books, I don't believe there is anything on the record to indicate that he had anything to do with the books.

I am offering now the person who is the reg-

istered owner and actual owner of the Somerset Manufacturing Company, and the person who visits the plant at least once a week, and goes over this payroll and he is the supervisor in charge of the payroll, and payroll entries. And the only person who is best fitted to testify in this matter of employment.

TRIAL EXAMINER GATES:

Well, you can go ahead, but if you run into cumulative testimony, Mr. Gerofsky, I am not going to permit it. I will stop you, or I will entertain a motion to strike if it gets to that point.

I am not going to preclude you from putting in anything that is pertinent.

MR. GEROFSKY:

I believe we were at the week ending the 23rd of August.

BY MR. GEROFSKY:

Q. You testified, I believe, that you had sixty employees that week?

A. Yes.

Q. Now, the following week, how many employees did you have in the plant? That is the week ending the 30th.

A. Fifty two.

Q. Fifty two?

A. Fifty two.

Q. Fifty two?

A. Yes.

Q. Now, do you have an entry in your books for the week ending August 30th indicating whether or not Elysabeth Shoaka was in your employ?

A. She did not attend that week.

Q. Is she listed as an employee?

A. She is listed on that month's schedule.

Q. She is listed as an employee?

A. Yes.

Q. Is there an entry indicating whether or not
Jean Collenda—

Withdraw that question.

Do you have an entry indicating when Teresa
Yemma last worked at the plant? Will you refer
to August 20th?

A. August 21st.

Q. Is that the last day she worked?

A. That is the last day she was there. Not an
entire day.

Q. Beg pardon?

A. Not an entire day.

Q. What time of the day did she leave?

A. I could not say. She is listed here as five
hours.

Q. Five hours?

A. Yes.

Q. Is she carried over the following week there?

A. She is listed on a monthly scale there.

Q. She is?

A. Yes, there are no entries as far as time is
concerned.

Q. Is she listed for the week ending September
7th?

A. Yes.

Q. Is she listed for the week ending September
14th?

MR. MOSCOVITZ:

Is that Yemma?

MR. GEROFISKY:

Yemma.

A. There is just that particular number of hers is vacant.

Q. It is vacant?

A. Yes.

Q. Left blank?

A. That is right.

Q. By that time, she had been out two weeks?

A. Yes.

Q. Did you ever discharge Teresa Yemma from employment?

A. No.

Q. Did you ever discharge Elysabeth Shoaka?

A. No.

Q. Marie Gecik, was she employed on August 20, 1935?

A. Yes.

Q. She was?

A. Yes.

Q. When was the last day she worked?

A. On the 21st.

Q. On the 21st?

A. Yes.

Q. How many hours did she put in on that day?

A. She worked a full day?

Q. She did work a full day?

A. Yes.

Q. And what was her number on the payroll?

A. No. 25.

Q. A full day was how many hours?

Withdraw that question.

I show you a card purporting to be a time card and No. 25 under the name of Mary Gecik, showing time for the week ending August 23, 1935, and ask you if that is the time card of Mary Gecik?

A. As far as I know, it is.

Q. It is?

A. Yes.

Q. What time did she punch out on that day?

A. One minute after five.

Q. Is that the closing hour of that plant ordinarily?

A. Yes, it was at that time.

Q. And what day was that, the exact date?

A. The exact date would be the 21st.

Q. What day of the week was it?

A. It would be a Wednesday.

MR. GEROFISKY:

I wish to have this card marked for identification.

(Thereupon the document above referred to was marked Respondents' Exhibit No. 1 for identification.)

BY MR. GEROFISKY:

Q. Now, Miss Fainblatt, I show you card No. 16 under the name of Teresa Yemma, indicating the time week ending August 23, 1935. Is that the card of Teresa Yemma, an employee?

A. Yes.

Q. How late did she work on her last day at the plant?

A. 1:52.

Q. And it was—the day was when?

A. On a Wednesday.

BY MR. MOSCOVITZ:

Q. What date.

A. The week ending August 23rd.

BY MR. GEROFISKY:

Q. That was August 21st, by the calendar?

A. Yes.

(The time card of Ethel Rice was marked Respondents' Exhibit No. 2 for identification.)

BY MR. GEROFISKY:

Q. Was Ethel Rice an employee of the plant on August 21, 1935?

A. May I ask a question?

Q. Her number?

A. Yes, her number.

Q. Her number is 45, I believe.

A. Yes, she was.

Q. And when did she last work?

A. The week of August 16th.

Q. Do you have her entered in the week ending August 23rd?

A. We have.

Q. How many days did she work in that week?

A. She worked a total of 35 $\frac{3}{4}$ hours. That is a part of each day.

Q. How many hours did you say?

A. Thirty five and three quarters.

Q. Is this her time card, bearing No. 45?

A. Yes.

Q. What was the time she left as indicated?

A. On Friday, one minute past four.

MR. GEROFISKY:

I wish to offer that for identification.

(Thereupon the document above referred to was marked Respondents' Exhibit No. 3 for identification.)

BY MR. GEROFISKY:

Q. Was Fay Katz in your employ for the week ending September 7, 1935?

A. She was.

MR. MOSCOVITZ:

What was that date?

MR. GEROFISKY:

The week ending September 7, 1935.

BY MR. GEROFISKY:

Q. Was she—did she put in any time the following week, ending the 14th?

A. She did.

Q. When was the last day she worked in that week?

A. On Wednesday. I have not got the exact date.

Q. Would it be the 18th?

A. Not if the week ended September 14th.

Q. The 11th?

A. Yes, it would be the 11th.

MR. GEROFISKY:

I believe you will agree with me that would be the 11th. I am looking at a calendar here.

BY MR. GEROFISKY:

Q. Did she put in any time with the Company on the following week?

A. It does not show any time the following week.

Q. What is the last day she is listed there as having worked?

A. The 11th.

Q. Wednesday the 11th of September, 1935?

A. Yes.

Q. I show you a card marked No. 13, indicating her employment number, Fay Katz's that is, for the week ending September 14, 1935 and ask you if that is Fay Katz's time card.

A. Yes.

Q. And what is the last time entry on that card?

A. Ten o'clock.

Q. What day?

A. On Wednesday.

Q. That is Wednesday, the 11th?

A. The 11th.

Q. Of September, 1935?

A. Yes.

MR. GEROFISKY:

I ask that be marked for identification.

(Thereupon the document above referred to was marked Respondents' Exhibit No. 4 for identification.)

BY MR. GEROFISKY:

Q. How many employees are listed as having devoted time to their work the week ending September 7, 1935?

A. Fifty two.

Q. Now, in that number of fifty two, you are giving just those girls who gave time or put in time in the plant for the week ending September 7th?

A. Yes.

Q. Were there some girls listed as employees but who were out that week still carried as employees by you?

A. Yes, there are other names there, but she shows no time.

Q. And how many persons are there listed as employees but who did not put any time in that week?

A. Three that I can find.

Q. Three?

A. Yes.

Q. That then lists a total number of employees on that weekly payroll, weekly listings of fifty five

three in addition to the fifty two who did put in time, is that right?

A. Right.

Q. Can you give me the names of those three persons?

A. There was Lorraine Vones.

Q. Was she also known by another name?

A. As far as I know, I think she was married.

Q. Is she the person known as Lorraine Heitz?

A. I think she was.

Q. And who were the other two?

A. Angelina Matteis, Elysabeth Shoaka.

Q. Are those three persons named the three persons specified in the charge?

A. There is Elizabeth Ethel Rice too, here.

Q. Ethel Rice too? That makes four, is that right?

A. That is right.

Q. Anyone else?

A. Mary Gecik.

There is a Lucy Pascale, Teresa Yemma.

Q. This is the week ending September 7th?

A. The 7th.

Q. They are still carried as employees?

A. Their names are listed here.

Q. That indicates, does it not, that they are employees of the plant at that time?

A. Yes.

Q. Anyone else?

A. That is all.

Q. And you gave me besides the number of fifty-two, you named six others, did you not, as having been on the payroll entirely? Give me your entire list of employees, those who put in time the week

ending the 7th, and those who are still employees according to your books but did not put any time in.

A. Sixty-three.

Q. Sixty-three?

A. Yes.

Q. Then you had sixty three employees for the week ending September 7th on your payroll records, is that right?

A. Right.

Q. And that is your only list of employees that you have?

A. That is my only list.

Q. Now, in the week ending September 14th how many employees were listed in the employ of the company, those who put in time, and those who were absent from work.

A. May I have that date again?

Q. The week ending September 14, 1935.

A. Fifty-four.

Q. Fifty-four?

A. Yes.

Q. Does that give me the entire list of the names of your employees?

A. The names that I account for.

Q. For that week?

A. Fifty-six.

Q. Fifty-six?

A. Fifty-six.

Q. Any of those of that number, are any of those persons engaged in an executive capacity?

A. No.

Q. They are all engaged in production?

A. Yes.

BY MR. MOSCOVITZ:

Q. That is fifty six on September 14th?

A. Yes.

MR. GEROFISKY:

The week ending September 14th.

BY MR. MOSCOVITZ:

Q. Is that the number of persons, who were employed that week?

A. They might not have been working, but their names are here. I counted names, not time.

BY MR. GEROFISKY:

Q. Were they employees of the company as of that day?

A. Yes.

Q. If a person was discharged from employment, would the name be stricken from the list?

A. His name would not appear.

Q. If a person was discharged?

A. Yes.

Q. And if a person was laid off momentarily, due to a slackening in work, for instance, the testimony of one of the employees indicates that she was laid off when she finished her bundle, and told to come back the next day.

Under circumstances of that sort, would they be carried as employees?

A. They would be carried as employees. Yes.

Q. They were still in your employ?

A. Yes.

Q. Now, on the week ending September 21st, how many employees did you have, including those who put in some time and those who did not?

A. Fifty-four.

Q. Fifty-four?

A. Yes.

Q. And that is the week in which the strike occurred at the plant?

A. Yes.

Q. Going back to the week ending September 7th, is Elysabeth Shoaka listed as an employee for that week?

A. You do not happen to know her number?

Q. No. 72, will that help you?

A. For what week did you want it.

Q. September 7th.

Go back to the week preceding August 30th, the week ending August 23rd.

A. August 23rd, she worked that week, part of that week.

Q. Did she work the following week, the week ending August 30th?

A. No.

Q. Did she work the week ending—
Was she listed there as an employee?

A. Yes.

Q. Did she work the week ending September 7, 1935?

A. No, she did not.

Q. Is she listed as an employee?

A. Yes.

Q. Did she work the week ending September 14, 1935?

A. No.

Q. Is she listed as an employee?

A. Her name does not appear.

Q. Her name does not appear?

A. No.

Q. But you carried her for several weeks there after as an employee?

A. Yes.

Q. Now, take Lorraine Heitz, who is also known as Lorraine Vones, that latter name being her single name, was she listed as an employee putting in some time the week ending August 23rd?

A. She worked part of the week of August 23rd.

Q. And from your records, did she work the week ending August 30th?

A. She did not.

Q. Was she listed as an employee?

A. Yes.

Q. Did she work the following week, September 7th?

A. She did not.

Q. Was she listed as an employee?

A. Yes.

Q. And was she listed as an employee the week ending September 14th?

A. No.

Q. Now, Ethel Rice, was she employed in the week ending August 23rd?

A. No.

Q. Is her name on the list?

A. Yes.

Q. She did not put in any time that week?

A. I have nothing here.

Q. Is she carried as an employee there?

A. Yes.

Q. And the week ending August 30th, was she listed as an employee?

A. Yes.

Q. And will you see if she is listed for the week ending September 7th?

A. Yes.

Q. Is she listed as an employee the week ending September 14th?

A. No.

Q. And you have already testified, have you not, that—see if I am right—that if a person was discharged their name would be stricken off the list, the employment list the week that such discharge occurred, is that right?

A. Well, there was not a new time card made out for her.

Q. Her name would not appear on the payroll list at all, would it?

A. No.

Q. Isn't that right?

A. That is right.

Q. Angelina Matteis, No. 75, I believe, the week ending August 23rd. Was she an employee of the plant?

Q. Did she put in any time that week?

A. Yes.

Q. How many hours?

A. Eighteen hours.

Q. What was the last day of that week that she worked?

A. It was on a Wednesday.

Q. That was the week ending August 23rd?

A. It is.

Q. What time of the day did she leave?

A. It shows she just worked two hours.

Q. Two hours?

The week following, that is August 30th, was she still listed as an employee?

A. She was listed, but there is no time shown.

Q. She did not put in any time?

A. No.

Q. Did you have her listed as an employee the following week, September 7th?

A. Yes.

Q. Did she put in any time?

A. No.

Q. September 14th, was she listed as an employee?

A. No.

Q. Fay Katz, was she an employee of yours in the week ending August 23rd?

A. Yes.

Q. Did she put any time in that week?

A. Yes.

Q. How many hours?

A. Twenty-nine hours.

Q. And was she listed as an employee on the following week ending August 30th?

A. Yes.

Q. Did she put in any time that week?

A. Forty hours.

Q. And was she listed as an employee on the week ending September 7th?

A. Yes.

Q. How many hours did she put in that week?

A. Seventeen and a quarter.

Q. Was she listed as an employee for the week ending September 14th?

A. Yes.

Q. How many hours did she put in that week?

A. Nine.

Q. What days of that week did she work?

A. Monday, Tuesday, and Wednesday.

Q. The week ending September 14, 1935?

A. Yes.

Q. And how many hours did she work on Wednesday?

A. Two.

Q. Two hours?

A. Yes.

Q. Is she listed as an employee in the week ending the 21st of September?

A. She is listed, but there is no time shown.

Q. The strike occurred on September 17th?

A. Yes.

Q. Now, Mary Gecik, going back to her record, was she listed as an employee in the week ending August 23rd?

A. Yes.

Q. Did she put in any time that week?

A. Up until Wednesday.

Q. Is she listed as an employee the week ending August 30th?

A. Yes. No time shown.

Q. Beg pardon?

A. She is listed.

Q. Any time?

A. No.

Q. What week was that again?

A. August 30th, or August 23rd.

Q. When was the last week that Mary Gecik was listed?

A. The week ending August 23rd. She did not work a full week.

Q. Did she put in any time the following week, the week ending August 30th?

A. No.

Q. Was she still an employee of the company?

A. Yes.

Q. Did she put in any time the week ending September 7th?

A. No.

Q. Was she still an employee of the company from the company's records?

A. Yes.

Q. And the week ending August 14th, was she still an employee from the company's records?

A. August 14th or 16th?

Q. The week ending August—September 14th.

A. No, her name does not appear.

Q. Her name does not appear?

A. No.

Q. So that if Mary Gecik states that she worked until August 29, 1935, she was not correct, was she? That is, actually putting in time?

A. No.

Q. Were you at the plant the day the strike occurred?

A. I was not.

Q. Do you have records indicating the number of persons who went on strike at the time?

A. Only by the hour that they left.

Q. And did you prepare a list of those who went out on strike?

A. I believe there was a list prepared.

Q. That list was taken from your records?

A. Yes.

Q. Is this the list you prepared, which I hand to you of those girls who walked out?

A. I think that was the list prepared at the time.

Q. And will you count for me the number of girls from your record who walked out?

A. Twenty.

Q. Twenty girls went out on strike?

A. Yes.

Q. And that was on September 18, 1935?

A. Yes.

Q. And on that day, September 18, 1935 that was a Wednesday, how many employees were actually listed in your employment, those who were putting in time, and those who were listed as employees and have not reported that day.

A. Fifty-three.

Q. Fifty-three?

A. Yes.

BY MR. MOSCOVITZ:

Q. Fifty-three what?

A. Were listed.

BY MR. GEROFISKY:

Q. Fifty-three employees listed that day, persons still in your employ?

A. Yes.

Q. Of that number, how many actually reported for work that morning?

A. Forty-six.

Q. Forty-six actually reported for work that morning?

A. Yes.

Q. You stated that twenty persons went out?

A. According to that list.

Q. That left, I believe, twenty-six persons who remained in the plant and continued working, is that right?

A. Yes.

BY MR. MOSCOVITZ:

Q. Does that exclude supervisory people, that figure?

A. Yes.

BY MR. GEROFISKY:

Q. You are only giving me numbers all this time, concerning persons who are engaged in production?

A. Yes.

Q. Operators and the like?

A. Yes.

Q. Not Mrs. Evans nor Ruby, nor any of the supervisory employees?

A. No.

Q. Then you had twenty-six persons remain at the plant?

A. Yes.

TRIAL EXAMINER GATES:

We will recess at this time until two o'clock.

(Thereupon, at 1:00 o'clock p. m., a recess was taken until two o'clock p. m.)

After Recess

(Whereupon, the hearing was resumed, pursuant to recess at two o'clock p. m.)

MARJORIE FAIBLATT resumed the stand as a witness by and on behalf of the Respondents, and having been previously duly sworn, was examined and testified further as follows:

Direct Examination (Continued)

BY MR. GEROFISKY:

Q. Your records indicate the employment of

Mrs. L. Gutowsky, known as No. 56, on August 9, 1935.

MR. HALPERN:

Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER GATES:

On the record.

MR. GEROFISKY:

The Board has submitted a list of cards purporting to represent those girls in the employ of the Somerset Manufacturing Company who were members of the Union, and I am now offering testimony with respect to a number of those girls with the view of showing that a certain number were not in the actual employ of the company at a time when they might be considered as part of the unit designated to select a representative.

TRIAL EXAMINER GATES:

I think you ought to change that, Mr. Gerofsky, as to the Board having submitted a list, because I did not submit it.

If you are referring to the list that I handed to you, I did not submit it as proof of anything. I merely handed it to you for your convenience.

MR. GEROFISKY:

That is in view of the fact that we don't have available the cards which were admitted into evidence at the first hearing, are now at Philadelphia, at the Circuit Court as part of the docket there, and not available for our use.

BY MR. GEROFISKY:

Q. No. 56, an employee known as Mrs. L. Gutowsky—do you have her in your list as an employee on August 9, 1935?

A. Well, she entered that week of August 9, 1935.

Q. Does your record indicate that she was an employee following that week?

A. She does not show that she was employed the following week.

Q. Will you turn now to the next week following that?

A. Yes.

Q. When was the last day she worked?

A. May I have that calendar there? August 24.

Q. She was never thereafter in the employ of the Somerset Manufacturing Company?

A. No.

Q. Now, with respect to an employee, a former employee, No. 23, Pisane, will you refer to the records for the week of June 24th?

A. The records of the week ending June 28th?

Q. When was the last day she worked?

A. The 28th.

Q. Of June, 1935?

A. Yes.

Q. Do your records indicate that she was listed as an employee thereafter?

A. Yes.

Q. How long?

A. They continued to list up to the week ending July 12th. Up to the week ending July 12th.

Q. Thereafter, is she listed?

A. No.

TRIAL EXAMINER GATES:

Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER GATES:

On the record.

BY MR. GEROFISKY:

Q. Now, the week following her last day that you gave us as a listing, did she put in any time at the plant at all?

A. You mean July 12th?

Q. That is right.

A. No.

Q. And you carried her, however, as an employee for that week?

A. Yes.

Q. Thereafter she was no longer carried?

A. No.

Q. Now, with respect to Ethel Hicks, who bears employment No. 50, she was working at the plant on September 18, 1935?

A. Yes.

Q. When did she leave the plant, if she did.

A. The day of the strike.

Q. Was she one of those who went out on strike?

A. Apparently.

Q. Let me ask you this: Is Ethel Hicks employed at the plant today?

A. I don't know whether she is employed at the plant today, but she did return to work.

Q. She did?

A. Yes.

Q. Do you know when she returned?

A. She returned the week ending November 7, 1936.

Q. And she worked at the plant thereafter?

A. Thereafter, Yes.

Q. Now, with respect to Frances Cicero, who carried here No. 63, was she working at the plant on September 18, 1935?

A. What was that number again?

Q. Frances Cicero, No. 63.

A. Yes, she was.

Q. Did she leave that day?

A. She left the day of the strike. She worked a full day.

Q. She did work a full day?

A. Yes.

Q. And the strike was at what time of the day?

A. I believe it was about ten in the morning.

Q. Did she return to work the following day?

A. She did not.

Q. Did she ever return to work?

MR. GEROFISKY:

Will counsel agree she was the girl who testified here on the stand.

MR. MOSCOVITZ:

Yes.

MR. GEROFISKY:

And that she returned?

MR. MOSCOVITZ:

Yes.

A. I have no record of her, Mr. Gerofsky. She might be on one of the other sheets.

Q. Your records don't indicate it?

A. No.

MR. GEROFISKY:

We will let that pass for the moment. She was the person who testified yesterday.

MR. MOSCOVITZ:

So agreed.

BY MR. GEROFISKY:

Q. Carmellá Recchia, she was in the employ of

the Somerset Manufacturing Company in September, 1935?

A. Yes.

Q. No. 27.

A. Yes.

Q. What was the last day she worked in September?

A. She went out the day of the strike.

Q. She is the young lady who testified here this morning that she joined with the strikers because of her fear of those about her who worked with her and lived in her neighborhood?

A. Yes.

MR. MOSCOVITZ:

I must object to Mr. Gerofsky's statement, Mr. Examiner. I will agree that she testified, but I trust we can eliminate the characterization made by Mr. Gerofsky of her state of mind.

MR. GEROFSKY:

She testified that she joined the strike because there were other girls who lived in her neighborhood.

TRIAL EXAMINER GATES:

I think we can let the record stand on her testimony rather than anything else.

BY MR. GEROFSKY:

Q. She has since returned to work?

A. Yes.

Q. Anna Lee, No. 29. Will you look at the record for September 7th, 1935 and tell me if that was the last day she worked at the plant?

A. Yes.

Q. Do your records indicate that she put in any time thereafter?

A. No.

Q. Referring to your record again, No. 41, Mary Kozar, September 11, 1935, do your records indicate that she worked on that day?

A. Yes, that was the last day.

Q. She never worked thereafter, from your records?

A. No.

Q. Sylvia Milano, who had No. 11 on your records, in the month of July, 1935, was she listed as an employee?

A. The week ending July 26th.

Q. Was she employed at the plant thereafter?

A. No.

Q. Did she give any time at the plant thereafter?

A. My records do not indicate.

Q. When was the last week that she was listed as an employee?

A. The week ending July 26th.

Q. Thereafter, she was out of your employ according to your records?

A. She really left on the 24th.

Q. Of July?

A. Yes.

Q. Mary Demko, No. 39. Your records indicate that she worked on July 26, 1935?

A. Yes.

Q. Did she work thereafter?

A. The records do not show.

Q. Did she work thereafter?

A. No.

Q. And was she any longer in your employ after July 26, 1935?

A. Her name is listed throughout August 9th, that was the last.

Q. August 9th is the last date she is listed?

A. Yes.

Q. The last day she actually worked was July 26th?

A. Yes.

Q. Now, your records indicate that a Mary Petrone ever worked at your plant?

A. I can't seem to find any record of her.

Q. Do you have any knowledge as to whether or not—

Withdraw the question.

You say her name does not appear on her records that was not in your employ?

A. I can't find her name.

Q. Would you say she was not in your employ if the records indicate her name was not listed as an employee?

A. I would.

Q. No. 85, Mimi Ross, do your records indicate that she worked in the month of July, 1935?

A. Yes.

Q. What was the last day that she did any work?

A. The week ending July 26th.

Q. 1935?

A. Yes.

Q. And thereafter did she do any work at the plant?

A. Her name appears up through August 9th, but she did not do any work.

Q. The last week her name appeared as an employee was August 9th?

A. Yes.

Q. 1935?

A. Yes.

Q. Wanda Kelly, she was one of those girls who went out on strike, September 18, 1935? Her number is 37.

A. Yes.

Q. And do your records indicate that she returned to work after the strike?

A. She did.

Q. And when did she return?

A. She returned the fifth month, 1936.

Q. That is May?

A. May.

Q. 1936?

A. Yes.

Q. She is still in the employ of the Somerset Manufacturing Company?

A. Yes.

Q. Now, Miss Fainblatt, did you trading as the Somerset Manufacturing Company purchase raw materials?

A. I did not.

Q. Did you as the Somerset Manufacturing Company sell any manufactured garments?

A. I did not.

Q. Did the Somerset Manufacturing Company have any sales agency?

A. No.

Q. Was the Somerset Manufacturing Company engaged in the sales of garments?

A. They were not.

Q. What was the business of the Somerset Manufacturing Company?

A. To manufacture the garments.

Q. And did the Somerset Manufacturing Company engage in the shipping of manufactured garments?

A. They did not.

Q. Where did the raw materials come from?

A. They came from the jobber.

Q. And who was the jobber for the Somerset Manufacturing Company?

A. The Lee Sportswear Company.

Q. And are you associated with the Lee Sportswear Company?

A. I am.

Q. In what capacity?

A. I am a partner.

Q. Is the Lee Sportswear Company interested financially in the Somerset Manufacturing Company as an owner?

A. They are not.

Q. Is the only association between the Somerset Manufacturing Company and the Lee Sportswear Company that of jobber and manufacturer?

A. Yes.

Q. Is the Lee Sportswear Company—

Withdraw the question.

Did the Lee Sportswear Company in July, August, and September of 1935 have any other source for manufacturing?

A. They did.

Q. And did they engage other manufacturers to manufacture garments for them in those months?

A. They did.

Q. And at the time of the strike, did the Lee Sportswear Company, to your knowledge, have

other manufacturers who might furnish finished garments for them?

A. I believe they did.

Q. Did the strike activity at the plant of the Somerset Manufacturing Company in Somerville affect the sales of your garments, the sales of the Lee Sportswear Company to your knowledge?

A. No, they did not.

Q. Was there any stoppage in the stream of commerce in the Lee Sportswear business selling garments?

A. No.

Q. By reason of the strike in Somerville with the Somerset Manufacturing Company?

A. No, there was not.

Q. Who received the raw materials at—
Withdraw the question.

Did the Lee Sportswear Company have a representative on the premises of the Somerset Manufacturing at Somerville?

A. They did.

Q. And do you know who that representative was?

A. Yes.

Q. What was his name?

A. Sol Fainblatt.

Q. Did he receive the raw materials when they were shipped to Somerville by the Lee Sportswear Company?

A. He did.

Q. And was it the practice for him to turn the garments over to the Somerset at Somerville when he received them, that is the raw materials?

A. Yes.

Q. And when the raw material was converted into garments, were they then returned to Sol Fainblatt, representing the Lee Sportswear Company, at Somerville?

A. They were.

Q. And what did he do with the garments when he received them?

A. He either stocked them or shipped them to the people that they belonged to, or rather, were sold to.

Q. And for whose account were they shipped or stocked?

A. The Lee Sportswear.

Q. They were not, to any degree, at all, stocked or shipped or sold for the account of the Somerset Manufacturing Company?

A. No.

Q. In other words, the Somerset Manufacturing Company was not engaged in selling garments?

A. No.

Q. The answer is No?

A. I beg pardon?

Q. Were not engaged in selling garments?

A. The Somerset was not engaged in selling garments.

Q. The Somerset Manufacturing Company was not engaged in buying raw materials?

A. No.

Q. I infer from what you tell me here they were not engaged in the shipping of either the raw materials or the finished garment, is that right?

A. That is right.

Q. Can you, Miss Fainblatt, tell me the gross amount of business that the Somerset Manufacturing Company did in the year 1935?

A. I judge it was somewhere around \$48,000.00.

Q. That was the year of the strike activity, is that right?

A. Yes.

Q. And the year preceding that, 1934, can you tell me approximately the gross amount of business done by the Somerset Manufacturing Company?

A. About \$9,000.00.

Q. Are there any other concerns or individuals engaged in the manufacturing of similar garments to those which the Somerset were manufacturing?

A. You mean—

Q. Were there any other concerns that you know of, or individuals, in the same line of business as the Somerset making the same garments or similar garments?

A. Do you have any particular territory?

Q. Anywhere that you know of.

A. There are any number of them.

Q. Do you know of persons or firms manufacturing similar garments?

A. I do.

Q. Were there many firms larger than the Somerset Manufacturing Company in that line?

A. Oh yes.

Q. Do you know how much manufacturing the Somerset did in comparison with the amount of manufacturing in that line which is carried on throughout this country?

A. I would not say it was more than a drop in the ocean.

Q. Is that the way you would characterize it?

A. That is the way I would characterize it.

Q. You have no idea of figures?

A. No.

Q. In other words, the Somerset Manufacturing Company was engaged in manufacturing sportswear to such a small degree that any labor dispute out there would not affect materially to any extent the flow of commerce in that line, is that right?

MR. MOSCOVITZ:

Just a moment. I don't know how to object to that question, Mr. Examiner, because it raises so many questions. But I do object to it.

It calls for a conclusion. It puts an answer to the witness, to which she must need only make an affirmative reply, and I think it should be rephrased.

It is leading.

TRIAL EXAMINER GATES:

Do you wish to rephrase it, Mr. Gerofsky?

MR. GEROFSKY:

Yes, I will reframe it.

BY MR. GEROFSKY:

Q. What proportion does the manufacturing which you say the Somerset does—the Somerset's gross business there to the gross, or the entire field of manufacturing in the same line.

A. I could not say.

Q. Would you say it was large or small?

A. I would say it is small.

Q. Would you say that any labor trouble incurred in the plant of the Somerset would affect materially the flow of commerce in that line?

A. No.

Q. Your answer is what?

A. I don't quite understand.

MR. MOSCOVITZ:

I don't understand either.

BY MR. GEROFISKY:

Q. In other words, would any—I will withdraw the question for the moment. Did the labor difficulty encountered by you at the plant in Somerville affect the flow of these garments in the sportswear industry?

A. No.

Q. Was the Lee Sportswear Company your sole jobber, able to obtain another manufacturer?

A. Well, they had been doing business with other manufacturers.

Q. Were you able to fill all your orders?

A. Yes.

Q. Do you have the books of the Somerset Manufacturing Company with you today?

A. I have them.

Q. Are you familiar with those books?

A. To some extent.

Q. To what extent? Do you know the number of employees at the plant in the Somerset Manufacturing Company today?

A. Oh, today—

MR. MOSCOVITZ:

That calls for a Yes or No answer.

MR. GEROFISKY:

Withdraw that question.

BY MR. GEROFISKY:

Q. Will the books reveal the number of employees at the plant today?

A. I have not got the books of the Somerset Manufacturing Company as they are today.

Q. You have not?

A. I have them up to the time that I was the owner.

Q. Do you know how many employees there are out there today?

MR. MOSCOVITZ:

May I ask that that be answered Yes or No, please, because I am going to object to the next question.

A. Would you mind repeating that, Mr. Gerofsky?

BY MR. GEROFSKY:

Q. Do you know how many employees there are at the plant at the present time?

A. Offhand, I can't say exactly.

Q. Do you know the average number of employees at the plant for the year, 1937, January to October?

MR. MOSCOVITZ:

I want to object to that question, Mr. Examiner, on the ground, first, that it is immaterial, it is irrelevant, it is incompetent, it has nothing to do with the issues that were before the Board originally, we being limited to the Acts as alleged as having been violation of this statute as of the time those violations took place.

Secondly, if it is going to be the policy of this Board or if it is going to be the law of this Board to permit changes in status to over-rule violations, you are going to frustrate the very purpose of this statute, because in every situation an employer can add the necessary number to over-ride the proper number existing at the time the violation took place in collective bargaining cases, and that must not, obviously, be permitted.

TRIAL EXAMINER GATES:

I will reserve decision on the objection.

The witness may answer it, if you care to make any statement in respect to it.

BY MR. GEROFSKY:

Q. Did you get that question?

A. I think I did.

MR. GEROFSKY:

Before proceeding with the question, however, I should like to answer counsel. I believe the purpose of the act under which we are proceeding here today is to sponsor a feeling of good will more or less, between the employer and the employee, and to prevent labor strike trouble, and it is with this view that we wish to offer this testimony today, in this respect: Firstly, we have the order of the Circuit Court of Appeals for the Third Circuit permitting this hearing.

That order was based on a petition filed with that Court, and in that petition we alleged a change in conditions at the plant since August, 1935 to October, 1935.

It seems that the Board through no fault of the Respondents in this case delayed its proceeding in the Circuit Court. They had made their findings, and it seems after they had come to these findings taken considerable time before they went to the Circuit Court.

Now, in that interim of time through no fault of the Respondents, conditions have changed, and then you go to the Circuit Court and ask the Circuit Court of Appeals to enforce an order, an order made by this Board, the Labor Board, that was made some time before the Circuit Court was appealed to, some time before the present condition came about in the plant,

and they were entirely different, and now that there are peaceful conditions in the plant I feel that the Circuit Court of Appeals should know of these peaceful conditions.

They have gone over it in stating it one case, I believe it was the case in which the Board was opposing it, the Delaware and New Jersey Ferry Company, and in that case the Court held that where the labor strife and conditions have been smoothed over and changed since the time the complaint was filed, then the Court would not enforce the Board's findings:

It is with that thought in mind that we offer this testimony today; first to comply with the petitions we filed, by which this hearing was obtained, and secondly to show a peaceful condition there with no strife between employer and employee, and no effect on commerce taking place, so far as the interruption is concerned.

TRIAL EXAMINER GATES:

I will continue to reserve decision on it.

The question may be answered.

BY MR. GEROFISKY:

Q. I believe the question is, do you know the average number of employees at the plant since January, 1937 to October, 1937?

A. Well—

MR. HALPERN:

Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER GATES:

On the record.

MR. MOSCOVITZ:

I am willing to stipulate, Mr. Examiner, with-

out waiving my objection that the average number of employees in the period stated by Mr. Gerofsky in the question put to this witness is 200.

MR. GEROFSKY:

Mr. Examiner, please, will you grant me a recess for a few moments?

I may be able to shorten these proceedings.

TRIAL EXAMINER GATES:

Very well. How long, three or four minutes?

MR. HALPERN:

Give us five minutes.

TRIAL EXAMINER GATES:

We will recess for five minutes.

(The hearing recessed for five minutes.)

MR. HALPERN:

We just want to add to the stipulation as given by Mr. Moscovitz the fact that the average number of 200 employees during the year 1937 were engaged in production at the plant—

MR. MOSCOVITZ:

In the tailoring department.

MR. HALPERN:

In the tailoring department.

MR. GEROFSKY:

I think that is all with this witness.

Cross Examination

BY MR. MOSCOVITZ:

Q. I am not going to ask you many questions about the stream of commerce, but I would like to know what you mean when you say that at the time of the strike there was no stoppage in the stream of commerce,

A. I don't quite understand just what you are trying to get at.

Q. I am not clear myself. Except that Mr. Gerofsky asked you whether or not there had been a stoppage in the stream of commerce at the time of the strike. Now, will you explain that to us a little better?

A. All I can understand of it was this: That whether it held up the Lee Sportswear Company from delivering their merchandise, and it did not.

Q. Was there a diversion of your business that ordinarily went to the plant in Somerville to a different plant during some period of the strike?

A. You mean did we ship the merchandise to other manufacturers?

Q. Rather than the Somerville plant?

A. Yes.

Q. Because of the dispute then in existence?

A. Yes.

Q. Now, the first plant in Somerville was the Somerville Manufacturing Company of which your father was the owner?

A. Yes.

Q. And at the time that he started operations in Somerville, he used machinery which was owned by you?

A. Yes.

Q. Now, did you own the machinery before it was sent to Somerville or did you buy it new some place and have it shipped to Somerville for his use.

A. I bought the machinery.

Q. Brand new?

A. Some of it was brand new.

Q. Did you buy it for the use of your father, Benjamin Fainblatt and then loan it to him?

A. I loaned it to him.

Q. Did he, during the period of time that he was using that machinery in his operations in the Somerville Manufacturing Company, pay you for the use of that machinery, or was it the kind of a loan that a daughter might make to a father?

A. It was a loan and yet with the contemplation that I would be taken care of.

Q. Now, when you say that you would be taken care of, do you mean—

A. I mean it would come under the list of expenses and so on. I had contemplated going into business.

Q. With him?

A. Not with him. By myself.

Q. By yourself?

A. Yes..

Q. But at the time you bought this machinery for him, he did not pay you for it, did he?

A. No, he did not.

Q. And you did not exact any payment from him for it?

A. No.

Q. Did you tell him that he could use it without payment to you?

A. If you want to say it in that term, Yes.

Q. Now, when you came out to Somerville in the Somerset Manufacturing Company, which subsequently went out of business—

A. When I came, the Somerset Manufacturing Company was doing business.

Q. When you came to Somerville the Somerset Manufacturing Company was in business?

A. Yes.

Q. Then you started the Somerset Manufacturing Company, is that right?

A. Yes.

Q. You say you were the sole owner of that business?

A. Of the Somerset Manufacturing Company.

Q. Is that right?

A. That is right.

Q. Your father had no interest in it at all?

A. No interest whatever.

Q. And then you both used the same machinery?

A. Yes.

Q. Were you manufacturing different kinds of things?

A. Yes and No.

Q. Did you use the same employees?

A. Yes.

Q. And they worked, of course, in the same plant?

A. Yes.

Q. How were you able to divide in the use of the machinery and the use of the employees the amount that each company would contribute toward the pay of a particular employee who might at that time have been working interchangeably?

A. They worked according to their time.

Q. Who allotted the time, who fixed the time.

A. They had their time card.

Q. If they went to work in the morning, they would punch a clock, wouldn't they?

A. Yes.

Q. Would they punch the Somerset Manufacturing Company card or Somerville card.

A. Whichever occasion might arise.

Q. Suppose they started to work in the morning, and punched a Somerset Manufacturing Company and in the middle of the day they were put on Somerville Manufacturing Company work, what would happen then?

A. They punched out, and repunched on a new card.

Q. Before they started a different operation they would go down and punch out and punch in on a new card?

A. Yes.

Q. You are sure of that?

A. Yes.

Q. So I have this straight, if Fay Katz went to work at nine and went to work at eleven o'clock on Somerset Manufacturing Company work, she would have punched in in the morning Somerset Manufacturing, is that right?

A. I would eliminate her name entirely, the name of an individual, yes.

Q. Any individual?

A. Yes.

Q. Then when she finished making a dress or coat or whatever it was at eleven o'clock, someone would bring her a bundle of goods of the Somerville Manufacturing Company?

A. I don't know just how they arranged it at the time. It usually would be a half a day's work.

Q. How would a person know when a person reported for work in the morning?

A. They would know.

Q. Which card to punch?

A. They were told.

Q. When they came in by the clock?

A. When they came in by the clock, Yes.

Q. So when they came in by the clock, someone would be there and say, "This morning, you punch a Somerset card, instead of a Somerville card."

A. I presume so.

Q. Do you know?

A. I was not there at the time when it was done.

MR. MOSCOVITZ:

Let me see the cards that were marked for identification. I want to make it clear.

MR. GEROFISKY:

I only have cards of the Somerset.

MR. MOSCOVITZ:

That was after the Somerville was out of business?

MR. GEROFISKY:

Somerville was out of business in February, 1935.

MR. MOSCOVITZ:

Now, it was not until January, 1937 that you sold the Somerset to your father?

A. Right.

Q. During the time of the labor dispute in question, it was still owned by yourself and your father was acting as manager?

A. Right.

Q. When did that transaction take place of your father becoming no longer an owner of Somerville Manufacturing Company, and becoming a manager of the Somerset Manufacturing?

A. He continued as a manager of Somerset Manufacturing.

Q. Was he a manager of it at the time he was also an owner of the Somerville Manufacturing?

A. Yes.

Q. So it was just a continuation?

A. Yes.

Q. When you sold this business to your father, he paid you for it, did he?

A. Yes.

Q. And while he was acting as Manager during this labor dispute, you paid him a salary?

A. A salary.

Q. Is that right?

A. Yes.

Q. Would you pay him by check or would you pay him by cash?

A. Cash, most of the time.

Q. Was the money from which his pay was drawn banked in Somerville or banked in New York?

A. I could not say.

Q. Who had charge of that?

A. Well, he himself.

MR. GEROFISKY:

Which money are you referring to?

MR. MOSCOVITZ:

His pay as Manager of the Somerset Manufacturing during the time that this labor dispute was in existence, at the time of the strike, during negotiations with Mr. Posner before the strike.

MR. GEROFISKY:

I can't see where that is material, Mr. Examiner, as to what Mr. Fainblatt did with his money. He may have banked it in Somerville, he may not have used the bank for his pay money. He may have spent it each week.

TRIAL EXAMINER GATES:

Are you referring to what Mr. Fainblatt did with the money after he was paid or not.

MR. MOSCOVITZ:

No. I don't like to go into these personal questions.

Mr. Gerofsky asked this witness on direct examination.

TRIAL EXAMINER GATES:

I am asking you whether you are referring—

MR. MOSCOVITZ:

I want to know who paid it.

TRIAL EXAMINER GATES:

Not what he did with the money?

MR. MOSCOVITZ:

I don't care what he did with the money.

TRIAL EXAMINER GATES:

You may continue.

BY MR. MOSCOVITZ:

Q. I want to know who paid Mr. Fainblatt for being manager out of the money of the Somerville or Somerset.

A. Out of the money of the Somerset Manufacturing Company.

Q. Did he have the right to draw the checks for payment himself?

A. He did not.

Q. Who had the right to sign checks?

A. Only I.

Q. No one else?

A. No.

Q. Your father then could draw no money?

A. No.

Q. Pay no bills?

A. No.

Q. Used no cash at all from the revenue of this company?

A. No.

Q. Did you also draw a salary from the company.

A. I did not draw a salary. I drew money.

Q. Certain intervals, I assume?

A. Yes.

Q. And were there other persons who drew money out of that business?

A. There was not.

Q. Just you and your father, is that right?

A. Yes.

MR. GEROFKY:

Just a moment. There is no testimony that her father did draw money out of the business. The testimony is here that he received a salary.

Q. Did your father draw any money out of the business outside of the salary?

A. No.

Q. Your father would get his salary as general manager, but you were the only one that drew interval payments?

A. That is right.

Q. During the time that your father was manager before he bought this business, who was in charge then of the labor policy of the Somerset Manufacturing Company? Who could do the hiring and firing?

A. Mr. Fainblatt.

Q. You mean Benjamin Fainblatt?

A. Yes.

Q. Who had the right to determine whether or not there would be negotiations with a labor organ-

ization or with a representative of a labor organization, Mr. Fainblatt?

A. Mr. Fainblatt.

Q. So that he was the person to deal with in that plant?

A. Upon consulting me.

Q. Your father would consult with you before he would do these things?

A. I think if anything more or less drastic, shall we say, occurred, he would.

Q. If he wanted to hire somebody or fire somebody he would wait until he discussed it with you?

A. No.

Q. What?

A. No.

Q. But if he had to do something drastic, like talking to a Union representative, that is different, is that it?

MR. GEROFISKY:

I object to that. There is no testimony here with this witness that anything of that sort would be drastic.

MR. MOSCOVITZ:

The witness testified if it was something drastic that had to be done, it would be done by conferring with Mr. Fainblatt.

There are only three things we are talking about here.

MR. GEROFISKY:

I submit there are any number of things that might be drastic, and I think Mr. Moscovitz might ask this witness if that is drastic.

MR. MOSCOVITZ:

I won't press it. I will let the record speak for itself.

BY MR. MOSCOVITZ:

Q. Did your father speak with you about discussions he had with Mr. Posner.

A. He did not go into details with me.

Q. Did you leave the matter in your father's hands?

A. To some extent.

Q. And to what extent didn't you?

A. I felt when the question arose that we would then discuss it thoroughly.

Q. What question?

A. The question of what policy to follow.

Q. Now, did your father tell you that Mr. Posner made a request for an agreement?

A. He did.

Q. That then precipitated determination of what policy would be pursued, didn't it?

A. Yes.

Q. Did you discuss it with your father?

A. I did.

Q. Decide the question?

A. No, we did not decide the question.

Q. What was decided?

A. There was no definite decision, simply told as the workers willed it.

Q. As what?

A. As the workers willed it.

Q. As the workers willed it?

A. Purely up to the workers themselves.

Q. So if the workers at that time wanted Mr. Posner to have a signed contract with the company, it would be all right with you?

A. We might have agreed upon it.

Q. Now, Mr. Posner brought that matter to the

attention of your father just that way, according to the record. What was the decision which you made on that point?

A. I did not think Mr. Posner at that time was the representative of our workers.

Q. Did you tell that to your father?

A. I did.

Q. Did you tell him to impart that information to Mr. Posner?

A. I can't remember exactly, but I presume I did.

Q. What investigation did you make to determine that he was not the representative of the workers? How did you find that out?

A. I made no investigation.

Q. Now, when you sold this business to your father, how much money did you get for it?

A. Mr. Fainblatt assumed all my liabilities.

Q. That was the sale?

A. That was the bill of sale.

Q. How large were those liabilities?

MR. HALPERN:

I object to the question. All this took place in January, 1937, following after the day of the strike, and long after the first hearing in this case. I can't see its materiality at all.

MR. MOSCOVITZ:

In the first place, it is raised on direct examination by Mr. Gerofsky.

In the second place, it throws some light, it seems to me, on the acts that preceded it, and on the situation as it really was prior to the time of the execution of this alleged bill of sale.

TRIAL EXAMINER GATES:

I will reserve decision on the objection. The

question may be answered, subject to later ruling on the objection.

A. Do you mind repeating that?

BY MR. MOSCOVITZ:

Q. How large were those liabilities?

A. There was a chattel mortgage, plus liabilities that I had.

Q. Chattel mortgage on the machinery?

A. Yes.

Q. Now, how was that assumption of liability by your father when you owned the machinery?

A. I was responsible for that machinery.

Q. So that someone held a chattel mortgage on that machinery that you bought for the use of your father?

A. Yes.

Q. And your father assumed the responsibility of paying off that money to the mortgagee?

A. Yes.

Q. Who was that person?

A. The Lee Sportswear Company.

Q. The Lee Sportswear Company is yourself, isn't it?

A. Only in part.

Q. The other part are brothers and sisters?

A. No.

Q. Just brothers? And has your father paid those liabilities?

A. Not yet.

Q. Does your father now run his business by signing his own checks?

A. He signs his own checks.

Q. You don't do it any more?

A. I have power of attorney.

Q. Why do you still have power of attorney if it is not your business?

A. The thought that he might, if anything were to happen to him, that there would be someone in the interval to take care of things.

Q. Of the business, you mean?

A. Yes.

Q. Do you ever sign checks to yourself as Lee Sportswear Company from the revenues of the Somerset Manufacturing Company?

A. No.

Q. In payment of any moneys that may be due the Lee Sportswear Company?

A. There are not any moneys due to Lee Sportswear Company, unless what Mr. Fainblatt owes them, which he has not paid for as yet.

Q. How long have those payments been overdue, since the first of January?

A. Since the first of January.

Q. You have not sent him a lawyer's letter, have you?

A. No.

Q. At the time of the strike you say that twenty persons struck, is that right?

A. I think so.

Q. That fifty-three persons were listed as being in the employ of the company, that forty-six reported for work the morning of the strike, and that twenty-six remained at work after the strike call was issued. Now, can you tell me of the twenty-six who remained at work how many were persons who were not employed in the tailoring department?

A. They were all employed in the tailoring department.

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Q. Weren't there any persons who acted as shipping boys or shipping girls?

A. No.

Q. What happened to them?

A. Well, there was not any need of them.

Q. You mean they had not been working the week or two before?

A. I don't quite understand.

Q. Let me put it to you this way.

MR. GEROFISKY:

I might suggest all of our figures given take in only those employees engaged in the manufacturing or production, tailoring department.

TRIAL EXAMINER GATES:

Q. Only those who have a number?

A. Those who have a number.

MR. MOSCOVITZ:

So that your figures, Mr. Gerofsky, did not include shipping people or persons outside of the tailoring department?

MR. GEROFISKY:

That is right.

BY MR. MOSCOVITZ:

Q. Now, Mr. Gerofsky went over some ten or eleven names with you, so that you could testify and give facts which would show that these persons were not in the employ of the company at the time of the alleged collective bargaining refusals. Do you have those records before you again?

A. Yes.

TRIAL EXAMINER GATES:

Off the record.

(There was a short discussion off the record.)

TRIAL EXAMINER GATES:

On the record.

BY MR. MOSCOVITZ:

Q. In those names, Miss Fainblatt, I understand that where a person has been employed on the last working day, if that person was not discharged, that person is carried on the payroll of the company as an employee for a certain period of time, despite the fact that that person does not work, is that right?

MR. GEROFISKY:

Not a certain period of time, or definite. The records will really indicate that time.

BY MR. MOSCOVITZ:

Q. Is that right?

A. The name is continued, yes.

Q. Is there a fixed period of time, fixed by the policy of this company, during which the employee's name is carried?

A. No, there is no fixed period or policy.

Q. So that a person's name may be carried on the payroll for one week or two weeks or more in some cases, isn't that true?

A. Yes.

Q. And who decides when the name shall be dropped from the payroll list?

A. Well, after we continue writing these names in the book for awhile we just drop them out, that is all. There is no time shown.

Q. The person who decides that, I assume, is the bookkeeper, isn't that right?

A. I guess.

Q. And if the bookkeeper does not get so tired one week she may continue it on for a couple of more weeks, is that right?

A. Yes.

Q. So there is no magic in the fact that somebody's name does not appear after a week or two on that payroll list?

A. No what?

Q. Magic in the fact.

A. No.

MR. MOSCOVITZ:

I think that is all.

Redirect Examination

BY MR. GEROFSKY:

Q. Do you remember the date that the Somerville started business out there, the Somerville Manufacturing Company?

A. I don't remember the exact, but it was the early part of August.

Q. What year was that?

A. 1934.

Q. How long after they started in out there in Somerville was it before your company came in?

A. Just a matter of a few weeks.

Q. It was just a matter of a few weeks' difference between the starting date of the Somerville and the Somerset?

A. Yes.

Q. Both of them, however, commencing operations in the month of August, 1934, is that right?

A. Yes.

Q. With respect to an employee who, for instance, taking Sylvia Marano, who worked there to a date in July, you carry her name, it seems, for a week.

Thereafter, her name was not listed as an employee. You don't know, do you, at the time an employee goes out what thoughts they entertain in their mind with respect to going back to work for you?

A. No.

Q. Whether or not they were quitting?

A. No.

MR. GEROFSKY:

That is all.

(Witness Excused.)

MR. GEROFSKY:

Will you permit me to take the stand?

LEON GEROFSKY a witness called by and on behalf of the Respondents, after having been first duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HALPERN: -

Q. Did you represent the Somerset Manufacturing Company during the strike proceedings?

A. I did.

Q. Did you have occasion to negotiate with Mr. Posner as regarding entering a contract for the employees?

A. Mr. Posner came to see me on one or two occasions, and then I had occasion to see him at the Post Office in Somerville on another occasion.

Q. What were the conditions under which Mr. Posner wanted you to sign a contract?

A. Mr. Posner came to me and said that he represented the girls, the employees of the Somerset Manufacturing Company, and that they had selected him as their representative.

I, in speaking with him, wanted to know where he got his authority, whether or not there had been an election held at the plant, and whether or not all of the girls, employees, had been afforded an opportunity to engage in the selection of a representative.

I insisted that he was just the representative, and fail to give me the information I sought, and I nevertheless asked him what he was seeking.

And he insisted that he was seeking a contract, an agreement, a minimum hour week and a minimum wage.

I asked him whether or not we could get together without a contract, and he insisted that we could not.

I asked him too whether or not a contract would require a closed shop, Union help entirely, and he insisted that it would.

And in all the proceedings that I had occasion to meet Mr. Posner, he would infer or insist from time to time that an agreement be one for a closed shop agreement, and that the whole matter of bargaining would be predicated upon a closed shop agreement in the plant.

Q. Now, since the last hearing held in Somerville, have you had occasion to negotiate or talk to anyone representing the union as regards a contract?

A. Yes.

Q. With whom?

A. I received a telephone call one day this past

summer from one who gave his name as A. Isserman, who said that he represented the International Ladies' Garment Workers' Union, and he wanted to know if we could get together in this dispute, and I told him that the matter was now pending before the Circuit Court, and I wondered whether or not we could talk of the matter now that the Board has prosecuted its petition with the Circuit Court of Appeals.

We ought to consult the Board attorneys first.

He then stated that if we could get a contract, referring to the International, if we could get a contract for the Somerset plant, we can dispose of the Circuit Court proceeding.

Q. Now, did he indicate whether or not this contract would be predicated upon a closed shop?

A. I asked him directly on that point, having had my experiences with Mr. Posner; I asked him about the closed shop features, I gathered were insisted upon by Mr. Posner, and he said, of course, naturally.

And when I asked him if the contract meant a closed shop, open to union help alone—

Q. In other words, in all your dealings, the only way you could have a contract would be on a condition precedent that there be a closed shop.

A. In all my experience in this matter, the only way we could even get together on bargaining was by way of taking in a contract, that is with my experiences with Mr. Posner, and this telephone conversation with Mr. Isserman.

Q. And you so informed your client?

A. I have.

MR. HALPEN:

That is all.

Cross Examination

BY MR. MOSCOVITZ:

Q. When you spoke with Mr. Posner, didn't he make any alternative suggestions or demands?

A. No, he never gave me any alternative suggestion.

Q. What election were you referring to at the time you asked Mr. Posner if an election had been held?

A. I was referring to thinking in my own mind at the time I was speaking of an orderly procedure by which it might be fairly and equitably determined whether or not Mr. Posner was a representative, calling an election in the plant, during working hours, which right should be afforded to the girls.

Q. An election to be called by whom?

A. An election to be held and called by the employees which was their right.

Q. Did you mean with the Union?

A. An election to be held among the employees of the Somerset to decide as to whether or not they wanted to be represented.

Q. Did you put the suggestion up to Mr. Posner that an election should be held in the plant?

A. I asked Mr. Posner insofar as a suggestion is concerned, I have repeatedly asked the National Labor Board whether or not we could have an election.

Q. Was that during the strike or after the strike?

A. Prior to the strike, insofar as Mr. Posner

was concerned, but after the strike with the Labor Board.

Q. Now, when you spoke of Mr. Posner, did you ask that an election be held or did you simply inquire as to whether or not one had been held.

A. No, I insisted from the information that I had that he was not the representative because no election had been held.

I had the information that no election had been held at the plant, and in addition to that, in speaking with a number of the girls, I wanted to satisfy my own mind, and I ascertained that they had not been invited to a meeting. In fact, I have a number of affidavits from a number of girls who were employed there at the time stating that they had no invitation to any meeting, never called upon in making any choice as to a representative.

Q. Now, in your negotiation with Mr. Posner, were you acting with the authority of Mr. Fainblatt, your client, to dispose of the dispute in question?

MR. HALPERN:

I object to the question. He did not say he was acting for Mr. Fainblatt. He was acting for the Somerset Manufacturing Company.

BY MR. MOSCOWITZ:

Q. I will amend my question, for the Somerset Manufacturing Company.

A. I was engaged by the Somerset Manufacturing Company, by Miss Fainblatt, to represent them in this dispute.

Q. And were you authorized to negotiate with Mr. Posner with a view toward settling the dispute?

A. I was authorized to talk with him, and he had, it seems, had gone down to the plant and made cer-

tain demands there, he went in very forcefully like, and his demeanor, and his general attitude forced more or less my client to come to me and tell me that I would have to talk to them. Certain things.

Q. That is what Mr. Fainblatt told you?

A. Miss Fainblatt, and Mr. Fainblatt.

Q. But you did not see that in the plant.

A. No; but I was satisfied after I saw Mr. Posner the first time that it was very possible.

Q. All right.

Now, then, when you were talking with Mr. Fainblatt, were you authorized to negotiate a settlement of the dispute?

A. I was, in a way authorized to discuss this whole matter.

Q. Were you authorized at any time to bargain with Mr. Posner as the representative of the Somerset Manufacturing Company?

A. No, I was not authorized to bargain with them.

Q. Were you authorized to enter into a collective agreement with him, whether it be written or oral?

A. No, I did not go into that with my client.

Q. Well, wasn't that one of the questions that you had before you in these conferences, the question of a collective agreement?

A. As I stated, Mr. Posner came to my office, the very first time, and he told who he was, and I have already related what transpired since, and I asked him just what sort of agreement it was, and he told me a closed shop.

And I asked him whether or not he could agree on hours and wages without an agreement, and he said No. That is an agreement for a closed shop.

MR. MOSCOVITZ:

Now, will the Reporter read my question back?

(The Reporter read the question:

"Q. Well, wasn't that one of the questions that you had before you in these conferences, the question of a collective agreement?")

BY MR. MOSCOVITZ:

Q. Isn't it a fact, that Mr. Fainblatt of the Somerset Manufacturing Company, would not under any circumstances recognize the Union as a representative of his employees, and its members for purposes of collective bargaining?

MR. HALPERN:

I object to the question. Mr. Fainblatt was not the Somerset Manufacturing Company.

MR. MOSCOVITZ:

Mr. Gerofsky testified Mr. Fainblatt retained him.

MR. GEROFSKY:

No, I said that Miss Fainblatt retained me.

BY MR. MOSCOVITZ:

Q. Then, I will amend my question by including the name Somerset Manufacturing Company.

A. I would not say so.

Q. What would you say then in that regard?

A. Insofar as the Somerset was concerned, the Somerset to my knowledge, in conversation with Miss Fainblatt and Mr. Fainblatt was willing to go along and work out the matter of wages, the matter of hours, and if at all possible a solution to this union dispute, whether or not these girls should be unionized. They were willing to go part way with him on that.

Q. Well, you say they were willing to discuss hours and wages and go part way. Were they willing to enter in an agreement on those points with Mr. Posner?

A. They were willing to work out an agreement. It seems after the Board came into the case, I believe it was after I had spoken with you and Mrs. Herrick, but Mr. Posner insisted upon a closed shop contract. Not at any time conceding,—we are not conceding at any time any fact of representation on the part of Mr. Posner.

I did it more or less by way of settlement, that could be worked out. We are not conceding any proper representation with these negotiations.

Q. Didn't Mr. Fainblatt say he would not have an outsider running his business?

A. When?

Q. During these negotiations.

A. I believe I heard him refer to someone else trying to run his business.

Q. Yes.

And wasn't that someone else the Union?

A. Just what he meant by it, I could not say. But he might have meant a number of things. He might have meant furtherance of what I have already stated, that Mr. Posner was not a proper representative, to his knowledge, or was not a properly selected representative.

Q. You mean he did not like his personality?

A. Forgetting personality, Mr. Posner was not properly selected as representative by the majority of the girls, and we had that, we had knowledge of.

Q. How do you know that he was not properly selected?

A: I spoke with a number of girls.

Q: Was that during the period of time that these negotiations were going on?

A: Yes, I believe it was. If you will let me refer to my diary.

It was around in November.

Q: 1935?

A: Yes.

Q: How about before, when Mr. Posner actually came in and claimed to represent these girls.

A: I spoke with them then. I spoke with the girls when I first came into the case. As I recall now—it is two years ago—I spoke with them first, and then later went down and asked the girls if they would sign an affidavit as to just what did happen with respect to the meeting.

Q: That was back then to the time Mr. Posner actually came in?

A: That was just before the hearings. The hearings were held in February, 1936. This was in November, 1935, two months [before] the hearing.

Q: Was that the first check then in November that you made of this question of whether or not he represented the girls?

A: The first check that I made was back around August or September, around that time.

Q: Did you do that by actually speaking to the girls whom he claimed to represent?

A: I did not know who he claimed to represent. That was just it. He would not give me the information.

I wanted to know who he represented, but he would not tell me. In fact, the very first time that I could get any information as to who were members

and who were not members, was at the hearing before this Board in February, 1936. I thought it was a matter of fairness, I should like to know.

Q. How did you find out then, did you simply question them indiscriminately in September, the girls?

A. I went about amongst a number of the girls.

Q. In the plant?

A. I waited there until the end of the day.

Q. Did you see them in the office of the company or in the shop itself?

A. I saw them in the shop.

MR. HALPERN:

For my benefit, I don't understand whether Mr. Gerofsky is talking about girls who had supposedly signed up with the Union, or girls who remained in the company unsigned.

I don't know which he is talking about.

MR. MOSCOVITZ:

Here is what I understand. I understand Mr. Gerofsky is claiming since he was not advised who the members were, he made it his business to check on this question of representation by questioning the girls without any previous knowledge as to whether or not they were members of this Union, and in that way find out.

BY MR. MOSCOVITZ:

Q. Isn't that true?

A. I circulated about the plant at the end of the day, to see just how far he was right or whether he was right or wrong in what he had said.

After all, I was called up to talk to this man, and my clients had received demands from this person, Mr. Posner, and we have a right to know whether or

not he was a total stranger, whether he actually represented them, whether or not all of the girls participated in the selection.

Q. How many girls did you see and question?

A. I have a record of that, Mr. Moscovitz. About twenty-six.

Q. Did you ask them definitely as to whether or not they were members of the Union?

A. I will tell you what I asked.

I asked them if they had been in the employ of the Somerset Manufacturing Company for any considerable period of time, more particularly were they in the employ of the Somerset in the month of September, 1935, and I asked them at any time were they informed of a meeting called by the International Ladies' Garment Workers' Union or any other Union.

I asked them if at any time they were invited to any meeting, whether or not they were ever called upon to select a delegate or representative to act in their behalf in the matter of bargaining collectively with the employer.

Q. Did any of them admit that they had signed application cards for membership in the Union?

A. I did not ask them if they had signed Union cards.

All I asked them was that which I have already related, and all of them told me that I spoke with, told me that they had not selected any representative, had not been invited to any meeting.

Q. Did you find, for instance, that any of the persons who told you that were persons whom you later discovered as having signed application cards for membership in the Union?

A. Not that I recall. I don't know.

Q. What were the names of the persons whom you questioned?

A. I believe one was Mabel Totten.

Q. Yes. There were twenty-six, weren't there?

A. What?

Q. Were there twenty-six?

A. Yes.

Q. What were their names?

A. Margaret Kopf, Genevieve Koproski, Natalie Rhodes, Mary Grill, Elizabeth Plum, Jean Drake, Louise Boner, Grace Vannest, Freda Bitthiem, Florence Elgarde, Fanny Ackerman, Anna Schnitzer, Mabel Rodenbough, Mary Gabinelli, Wanneta Bartly, Mary DeMelio, Sophia Kowaleczuk, Ann Teehan, Genevieve Vadinski.

Those are the ones.

BY MR. MOSCOVITZ:

Q. That is twenty.

A. Did I give you Josephine Lazafiti. I believe she was one.

Did I name Anna Lee? I am not sure whether I spoke to her. I can't say.

You see, some of these girls signed a statement to that effect, and I have copies here, and some of these persons when I later went back were out on the occasion of my visit for the day.

I would say that number of twenty-six is an approximation.

Q. After you made this check of the girls, did you advise your client of those facts?

A. I can't say that I did. I just don't recall definitely what I did say with respect to it.

I do know this, however, when the Board came

into the case I submitted and insisted that we still could not see where Mr. Posner had been called upon by a majority of the girls, of the employees.

Q. Did you in this submission disclose to the Board that you had affidavits signed by persons employed which indicated that they were not desirous of being represented by Mr. Posner.

A. I did not indicate to the Board that I had affidavits to the effect that they were not desirous, because I did not have any affidavits of that sort.

I merely had statements of these girls that they had not been called upon, not invited.

What I did do was to submit a list of names to the Board, and the Board without disclosing to me the names submitted by Mr. Posner.

Q. Was supposed to check?

A. Was supposed to check on those.

Q. That was a payroll list, isn't that it? A list of the names of the persons on the payroll at a certain date?

A. I have a list of it. I believe the Board's correspondence will indicate that.

Q. As a matter of fact, after you made this check, you knew pretty well what the result of an election would be?

MR. HALPERN:

I object.

A. No. I did not.

MR. MOSCOVITZ:

I withdraw the question.

A. No, did not.

MR. MOSCOVITZ:

I withdraw the question.

That is all.

Redirect Examination

BY MR. HALPERN:

Q. At the time Posner came down to talk to you, were you under the impression that he was proceeding under the Wagner Labor Act to represent these girls?

A. No, I was not at that time. I was not under the impression that he was proceeding under the Wagner Act, but I knew of the Wagner Act.

Q. You knew the Wagner Act required fifty per cent of the girls?

A. That is right. I knew of the Wagner Act, and I had read the Act, and having read the Act, and having considered it, I then took the course that I have taken thus far.

Q. Did you at that time that your clients were engaged in inter-state commerce?

A. No.

Q. Was that perhaps, another reason why you felt with Posner the day you did, or didn't you take that into consideration?

A. No, Mr. Posner mentioned something to me about the Wagner Labor Act. It is all right if Mr. Posner wants to go into the Wagner Labor Act, I would go into it too, to see just what provisions there were to it.

MR. HALPERN:

That is all.

Recross Examination

BY MR. MOSCOVITZ:

Q. Did you understand that under the Wagner Act you have to have fifty per cent?

A. I understapd the term, the majority, to be better than fifty per cent.

Q. Better than fifty per cent.

On this inter-state commerce question, when Mr. Halpern asked you if your opinion of the inter-state commerce lead you to deal the way you did with Mr. Posner, I am not clear just what your answer means to that question.

A. May I have my answer.

(The Reporter read the question and answer as follows:

“BY MR. HALPERN:

Q. Was that perhaps another reason why you dealt with Posner the way you did, or didn't you take that into consideration.

“A. No, Mr. Posner mentioned something to me about the Wagner Labor Act. It is all right if Mr. Posner wants to go into the Wagner Labor Act, I would go into it too, to see just what provisions there were to it.”)

MR. MOSCOVITZ:

Having had the Reporter read back the question put to you on commerce, and having had the answer, I won't press the point further.

That is all.

MR. HALPERN:

That is all.

(Witness Excused.)

MR. GEROFSKY:

As far as testimony is concerned, we are finished.

TRIAL EXAMINER GATES:

Is there anything further?

*Motion to Dismiss
Board's Complaint*

MR. MOSCOVITZ:

Nothing further.

MR. GEROFISKY:

I would at this time move to dismiss the Board's complaint and charge with respect to the eight girls.

There is nothing in the entire record to indicate definitely that Mr. Posner or the International Ladies' Garment Workers' Union, Local 149, was ever selected by a majority of the employees at the plant, either in August or September of 1935, or any time thereafter.

There is no definite or conclusive proof or even the slightest proof that might be called to convince me if you are to refer to the records of the concern, the only real record for this Board that any of these eight girls were discharged, there is, on the other hand, definite conflict in the testimony of the eight girls with respect to representation, and by reason of their conflicting statements, I am safe in saying that we can't rely to any great extent upon their testimony, that we must accept without question the testimony offered by Miss Fainblatt, and the records of the concern.

To be specific with respect to these eight girls, Mr. Posner says that the very first time that any cards were signed was on August 21, 1935, at Harmony Hall in Raritan.

He said there were twenty-five cards signed at that time.

That is the first time we ever had any cards signed, from the evidence of Mr. Posner, the

representative of the Union and the alleged representative of the girls.

TRIAL EXAMINER GATES:

Just a moment, before you proceed.

If you want to argue it, that is perfectly all right. But we won't put it on the record.

The Examiner wishes to say unless you wish to state very briefly the grounds, those properly go in the record, I don't want to make a long record of argument on it.

You may do it either way, whichever way you want to do it.

(There was a short discussion off the record.)

MR. GEROFISKY:

I can be very specific about it.

TRIAL EXAMINER GATES:

Very well.

MR. GEROFISKY:

I wish to at this time ask for a dismissal of the complaint for three reasons:

Firstly, there is no testimony sufficient and satisfactory testimony upon which we might conclude Mr. Posner represented the girls.

There was never an election held at the plant, according to the testimony, or at any other place wherein a majority of the girls selected him.

My second point on which I rely is that there is no inter-state commerce activity on the part of the Respondent, Marjorie Fainblatt.

The third point I wish to relate at this time is that insofar as the Respondent, Benjamin Fainblatt is concerned, I submit the charges must be or should be dismissed against him en-

*Motion to Dismiss
Board's Complaint*

tirely, because there is no testimony here that definitely indicates that he is the owner of the Somerset Manufacturing Company, or anything more than an employee of the Somerset Manufacturing Company. That the records that we must go by, the best evidence is that evidence of ownership as filed with the Secretary of State, the State of New Jersey and the County Clerk, the County of Somerset, New Jersey. Those records, the testimony indicates, show that Marjorie Fainblatt is the sole owner and operator of the Somerset Manufacturing Company, and all the girls who testified stated that they were in the employ of the Somerset, not the Somerville, and it is stipulated the Somerville owned by Benjamin was out of business after February, 1935, a great time before this dispute.

TRIAL EXAMINER GATES:

Your last point raises two questions in my mind. First, is the point which refers only to the time of the strike, and say, up to February, 1936, when the first hearing in this case was held. Is that correct?

MR. GEROFISKY:

Yes.

TRIAL EXAMINER GATES:

The second question is: Are you contending that Mr. Fainblatt is not now the owner of Somerset?

MR. GEROFISKY:

I am contending that she is, since January 2nd, the owner of the Somerset.

TRIAL EXAMINER GATES:

But not prior thereto?

MR. GEROFISKY:

Not prior thereto. Insofar as a dispute is concerned, I will state just as the Board has stated in its answer to my application before the Circuit Court, that they must concede this matter of collective bargaining today, and drop the charge, so to speak, because they cannot say that Mr. Posner represents a majority of the girls.

TRIAL EXAMINER GATES:

No, but I wanted to be certain that you were not at this point contesting that there was no proof as to the present owner of Somerset. That is conceded to be Mr. Faïnblatt, isn't it?

MR. GEROFISKY:

Today, since January, 1937.

With respect to that, my other point is that the Board has been dilatory in making its findings and taking further action on its findings heretofore made, in taking the matter to the Circuit Court of Appeals at Philadelphia, that in that interim of time, taken voluntarily by the Board, conditions at the plant have changed to such an extent that there is a peaceful operation, and a complete termination of any labor strife, with a number of girls being rehired, and re-employed who came back voluntarily and so forth.

TRIAL EXAMINER GATES:

Anything further?

Do you wish to reply to that, Mr. Moscovitz?

MR. MOSCOVITZ:

No.

TRIAL EXAMINER GATES:

Motion is denied.

MR. GEROFISKY:

Exception.

TRIAL EXAMINER GATES:

Is there anything further?

The hearing is adjourned.

(Whereupon, at 5:00 o'clock p. m., October 25, 1937, the hearing in the above-entitled matter was closed.)

SUPPLEMENTAL DECISION AND ORDER

On June 3, 1936, after a hearing, the National Labor Relations Board, herein called the Board, issued a Decision in this case¹ in which it found that Benjamin Fainblatt and Marjorie Fainblatt,² individuals doing business under the firm names and styles of Somerville Manufacturing Company,³ and Somerset Manufacturing Company, both of Somerville, New Jersey, herein called the respondents, had engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449. The unfair labor practices so found consisted in discrimination against eight of the respondents' employees in regard to hire and tenure of employment, thereby discouraging membership in International Ladies' Garment Workers' Union, Local No. 149, herein called Local No. 149, and in the refusal to bargain collectively with Local No. 149. The Board ordered the respondents to cease and desist from such actions; to reinstate to their former positions, with back pay, the employees found to have been discriminated against; to offer employment to all employees of the tailoring department who had gone out on strike as a result of the unfair labor practices, where the positions held by such employees on September 16, 1935,

¹ 1 N. L. R. B. 864.

² The name of the respondents has been variously spelled as Feinblatt, Fainblott, and Fainblatt. Marjorie has sometimes been referred to as Margaret, or Margorie.

³ The name, Somerville Manufacturing Company, was discontinued on February 15, 1935.

the date of the strike, were held by persons subsequently employed; to place other striking employees on a preferential seniority list, to be offered employment when their labor was needed; and, upon request, to bargain collectively with Local No. 149.

Pursuant to Section 10 (e) of the Act, the Board, on June 17, 1937, petitioned the United States Circuit Court of Appeals for the Third Circuit, herein called the Court, for the enforcement of this order. On October 4, 1937, the respondents filed a petition with the Court alleging in substance that they had failed to call witnesses and introduce any evidence at the former hearing because they believed that the National Labor Relations Act was unconstitutional, or if constitutional, not applicable to the respondents; that the sole employer of the persons named in the complaint was Marjorie Fainblatt, so that the respondent, Benjamin Fainblatt, was not a proper or necessary party; that on January 2, 1937, Marjorie Fainblatt sold and conveyed the Somerset Manufacturing Company to Benjamin Fainblatt; that the number of employees had increased from 58 at the time of the Board's hearing, to 200; that no election had ever been held at the plant for the purpose of having the employees select their representatives; that attempts to settle differences between the respondents and Local No. 149 had proven futile; and that since the date of the strike a number of the employees had returned to work. The petition asked leave to adduce additional evidence in support of the allegations set forth therein. On October 15, 1937, the Court ordered that the respondents have leave to adduce additional evidence; and that such additional evidence be taken before the Board, its member,

agent or agency, together with any findings thereon, and be made a part of the transcript of the record in this cause.

Pursuant to notice, duly served upon the parties, a hearing was held in New York City on October 22, 1937, before Robert M. Gates, the Trial Examiner duly designated by the Board. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to the parties. At the outset of the hearing, the Board's attorney objected to the reopening of the proceeding, and to the granting of the petition for leave to adduce additional evidence. The Board called no witnesses at this hearing, and merely cross-examined witnesses for the respondents.

The rulings of the Trial Examiner on motions and on objections to the introduction of evidence are hereby affirmed. The objection of the respondents to questioning on the subject of the details of the transfer of Somerset Manufacturing Company in January, 1937, is hereby denied. In view of the order to be made, we do not need to consider other objections upon which no rulings were made.

Upon the entire record in the case the Board makes the following supplementary:

FINDINGS OF FACT

At the conclusion of the second hearing, the respondents moved to dismiss the complaint on three specific grounds: namely, that there was no testimony that Harry A. Posner represented the employees, or that an election was ever held in which he had

been selected; that the respondents were not engaged in interstate commerce; and that the charges ought to be dismissed against Benjamin Fainblatt because, at the time the unfair labor practices are alleged to have occurred, he was nothing more than an employee of Somerset Manufacturing Company, herein called Somerset. The question of interstate commerce has been discussed in the first opinion, and the testimony at the second hearing adds little to that already in the record. We shall review the other objections and then consider the additional evidence bearing upon the discriminatory discharges and other acts of interference with self-organization.

In the petition for leave to adduce additional evidence, the respondents insisted that Benjamin Fainblatt was not a proper or necessary party. The testimony of Benjamin Fainblatt at the first hearing in regard to the ownership of Somerset was as follows:

“Q. In what capacity are you associated with these two companies?

A. I am the owner.

Q. Complete owner?

A. Complete owner.

Q. Are you in charge of operations?

A. I am in charge of my own factory . . .”

“Q. Who is Marjorie Fainblatt?

A. My daughter.

Q. Does she have any ownership interest?

A. No.

Q. She is employed by you?

A. Well, she is and she is not.

Q. In what way is she not?

A. Just merely she is helping me as a daughter a father.

Q. Then is not—

A. Not as an employee.”

“Q. Marjorie Fainblatt is registered here in Somerville under a trade name also?”

A. She has registered under the name of Somerset Manufacturing Company.

Q. She is registered here under that name?

A. Yes.

Q. And operates with the Lee Sportswear Company as a partner; is that it?

A. She is a partner in that firm there.

Q. So that although she is a partner of Lee Sportswear, she is here in your plant working with you?

A. No, sir, she is not in my plant, she only comes in.

Q. But she is a registered owner with your company?

A. She is a registered owner, but I am working myself there.

Q. You registered—you testified before that you were the complete owner.

A. Yes.

Q. How is she registered here as a part owner?

A. In place, not to conflict with the what you call them—the code authorities—so as not to have any trouble—so, we went to work and I made Somerset and I gave her the permission to—

Q. Then her registration, in fact means nothing?

A. No, positively nothing."

At the second hearing, Marjorie Fainblatt testified:

"Q. Were you the sole owner of that business? Known as the Somerset Manufacturing Company?

A. I was."

* * *

"Q. Did Benjamin Fainblatt have any association with the Somerset Manufacturing Company?

A. Only as my manager.

Q. He was not the owner of the Somerset?

A. He was not."

* * *

"Q. Are you the owner of the Somerset Manufacturing Company today?

A. No, I am not.

Q. Have you disposed of your interest in the Somerset?

A. I have.

Q. And when did that take place?

A. At the beginning of the year.

Q. Do you remember the month?

A. January.

Q. Who became the owner?

A. Benjamin Fainblatt."

Marjorie testified further that she had sold Somerset to her father on January 1, 1937, in return for his assumption of the liabilities of that company. These liabilities included a chattel mortgage on the

machinery. This mortgage is held by Lee Sportswear Company a partnership composed of Fainblatt's children, Marjorie, Lee and Irving. She also testified that as yet her father had made no payments on any of the liabilities, and that she still had a power of attorney, "just in case anything happens to Benjamin".

Upon all the testimony, we find that Benjamin Fainblatt has been, and is now, the real owner of Somerset, and that Marjorie was merely a nominal registered owner. Because of the alleged change in nominal ownership, the Board will amend its order by making it applicable to Benjamin Fainblatt and Marjorie Fainblatt, individuals doing business under the firm name and style of Somerset Manufacturing Company, and to their successors and assigns.

The respondents consistently advanced the claim that Local No. 149 had never been designated by the employees, inasmuch as no election to select a bargaining representative had ever been held by the employees. Under Section 9 (a) of the Act, employees need not hold an election to determine their representatives for purposes of collective bargaining. The only requirement is that such representatives be designated or selected by a majority of the employees in an appropriate unit. On the basis of the evidence submitted at the first hearing, the Board found that Local No. 149 had been so designated. No evidence submitted at the second hearing can be said to contradict this. Nor was any evidence introduced to contravert the Board's previous finding that the respondents on and after Septem-

ber 6, 1935, refused to bargain collectively with Local No. 149 as such representative of its employees.

The Board therefore reiterates what it said in regard to the violation of Section 8 (5) of the Act. That violation is not affected by any subsequent change in the situation. However, testimony that the number of permanent employees in the plant has risen from 59 to approximately 200 is uncontradicted. Two years have now elapsed since the respondents' first refusal to bargain collectively, which precipitated the strike. The Board has no evidence before it as to the present membership in Local No. 149 among the greatly increased force now employed. In view of these circumstances, the Board will amend its order by striking out that part which requires the respondents to bargain collectively with Local No. 149. This does not mean, of course, that the respondents are relieved of their obligations under Section 8 (5), of the Act, or that if the Union now or subsequently is designated by a majority of the employees in an appropriate unit, the respondents may refuse to bargain collectively with it.

With respect to the discriminatory discharges and the various acts of interference found by the Board in its first decision, neither the petition for leave to adduce evidence, nor the motion to dismiss, challenges the findings of the Board as to these matters. In fact, the evidence brought forward by the respondents at the second hearing fully corroborates the conclusions previously reached by the Board. Thus the new testimony discloses that the discharges did not take place because of poor work; that work was not slack at that time; that new workers have

replaced the old employees and that the respondents have made no attempt to recall the discharged employees.

The other measures taken by the respondents to thwart the organization of their employees, and the methods of coercion they employed, are now revealed by the respondents' own witnesses. In general, these witnesses took the position that they knew little or nothing about the activities of Local No. 149. Thus on direct examination, Ruth Evans, forelady, denied that she had ever spoken to Benjamin Fainblatt, Orshan Ruby, supervisor of production, or anyone else, about Local No. 149, or that she had ever attended a meeting at which it was discussed. On cross-examination she was confronted with the testimony of Ruby, that he had spoken to her several times about Local No. 149, and that she had told him from time to time that the shop was being organized. Mrs. Evans then said that she did not recall whether Ruby had ever spoken to her.

That the respondents must have known the names of those active in Local No. 149, before the strike, is clear from other evidence. The testimony of Ruby, which follows, is especially instructive in view of the purported lack of knowledge of the activities of Local No. 149:

"Q. Who is this one girl that would tell you about the Union?

A. I think her name was Vermilyea.

Q. Vermilyea what?

A. I don't know her second name.

Q. Is she still working for you.

A. No, she is not.

Q. Did she keep you advised of all the things that the Union boys and the Union girls were doing?

A. That is right.

Q. Would she tell you what would go on at the meetings?

A. She would from time to time. I don't know whether she did tell me the truth or not, but she used to come and tell me.

Q. Did she tell you that all during the period of time up until the strike took place?

A. Well, I would not say. For about a week or so.

Q. Did you learn from her that Fay Katz was active in the Union?

A. I have not learned from her anything of the kind.

Q. Now, you don't want to contradict yourself, do you?

A. I do not.

Q. Now, you told me that she told you all the things about the Union.

A. That does not mean to say I have learned anything from her. I have heard from her, that is about all.

Q. Heard what, about Fay Katz?

A. About Fay Katz, what is the difference Fay Katz or any of the other girls.

Q. No difference.

A. She used to come and tell me; this one and the other.

Q. She would tell you about particular individuals?

A. She would.

Q. You don't deny she told you about Fay Katz?

A. I do not.

Q. You don't deny she told you about these other girls Mr. Gerofsky asked you?

A. She did.

Q. She did?

A. Yes."

Thus the testimony brought forward by the respondents at the second hearing, far from establishing a defense, merely serves to further implicate the agents and supervisory officials of the respondents. The respondents have shown no sign of complying with the provisions of the Act, but, on the contrary, have more clearly evidenced their desire to evade their responsibilities under the Act. On this state of the record, we see no reason for modifying the order of the Board, dated June 3, 1936, with the exception of those changes noted above; and we hereby reaffirm that order.

Order

On the basis of the foregoing findings and supplementary findings of fact and conclusions of law and pursuant to Section 10 (c) and (e), the National Labor Relations Board hereby orders that the respondents, Benjamin Fainblatt and Marjorie Fainblatt, individuals doing business under the firm name and style of Somerset Manufacturing Company, their successors and assigns shall:

1. Cease and desist from:

(a) In any manner interfering with, restraining, or coercing their employees in the exercise of their right to join and assist Local No. 149 of the International Ladies' Garment Workers' Union or any other Labor organization;

(b) Discouraging membership in Local No. 149 of the International Ladies' Garment Workers' Union or in any other labor organization of their employees by discharging, refusing to reinstate, or otherwise discriminating in regard to tenure or terms of employment against employees who have joined or assisted Local No. 149 or any other labor organization of their employees;

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Elizabeth Schoka, Lorraine Heitz, Ethel Rice, Angelina Matteis, Mary Gecik, Fay Katz, Anna Santoro, and Theresa Yemma, immediate and full reinstatement to their former positions without prejudice to any rights and privileges previously enjoyed.

(b) Offer employment to all employees of the tailoring department who went on strike on September 18, 1935, or within one week thereafter where positions held by such employees on September 18, 1935, are now held by persons who were not employees of the respondents on September 18, 1935, but were employed subsequently thereto, and place all other employees who struck on September 18, 1935, or within the following week on a preferential list to be offered employment according to their senior-

ity in respondents' employment, as and when their labor is needed.

(c) Make whole said Elizabeth Schoka, Lorraine Heitz, Ethel Rice, Angelina Matteis, Mary Gecik, Fay Katz, Anna Santoro and Theresa Yemma for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which she would normally have earned as wages during the period from the date of her discharge to the date of such offer of reinstatement, less earnings from other employment during such period.

(d) Post notices in conspicuous places in the plant stating (1) that the respondents will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of thirty (30) consecutive days.

Signed at Washington, D. C., this 17th day of December, 1937.

J. WARREN MADDEN,

Chairman.

EDWIN S. SMITH,

Member.

DONALD WAKEFIELD SMITH,

Member.

*National Labor Relations
Board*

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Bertram Katz, being first duly sworn, on oath saith that I am one of the employees of the Na-

tional Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 17th day of December, 1937, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Supplemental Decision and Order to the following named persons, addressed to them at the following addresses:

Alexander Feller, Esquire
Schenck Bldg.
41-43 Paterson St.
New Brunswick, N. J.,
Leon Gerofsky, Esq.
Central Building
Somerville, N. J.

BERTRAM KATZ.

Subscribed and sworn to before me this 17th day of December 1937.

HAROLD G. WILSON,
Notary Public,
District of Columbia.

My commission expires May 15, 1941.
(Seal)

Return Receipt

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Alexander Feller
(Signature or name of addressee)

Edith Hess
(Signature of addressee's agent)

Date of delivery, Dec. 18, 1937

(On Back)

Registered Article No. 69043.

Insured Parcel

(Stamp) Registered Somerville, N. J., Dec. 18,
1937.

Return to National Labor Relations Board

(Name of Sender)

Street and Number, }

or Post Office Box, }

WASHINGTON,

D. C.

Return Receipt

Received from the Postmaster the Registered or
Insured Article, the original number of which ap-
pears on the face of this Card.

Leon Gerofsky

(Signature or name of addressee)

(Signature of addressee's agent)

Date of delivery Dec. 18, 1937

(On Back)

Registered Article No. 69044.

Insured Parcel

(Stamp) New Brunswick, N. J., Dec. 18, 1937.

Return to National Labor Relations Board

(Name of Sender)

Street and Number, }

or Post Office Box, }

WASHINGTON,

D. C.

**SUPPLEMENTAL CERTIFICATE OF THE
NATIONAL LABOR RELATIONS
BOARD.**

The National Labor Relations Board, by its Secretary, duly authorized by Section 1 of Article VI of the Rules and Regulations of the National Labor Relations Board, series 1 as amended, effective April 28, 1936, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a supplemental proceeding held pursuant to an order of this Court filed October 15, 1937, entitled "In the Matter of Benjamin Fainblatt and Marjorie Fainblatt, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company and International Ladies' Garment Workers Union, Local No. 149", the same being Case No. C-53 before said Board, such transcript including the pleadings, testimony and evidence upon which the supplemental order of the Board in said proceeding was entered, and including also the supplemental findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Notice of hearing issued by the National Labor Relations Board on October 15, 1937.
 2. Copy of order designating Robert M. Gates Trial Examiner, dated October 20, 1937.
- Documents listed hereinabove under items 1 and

2 are contained in the Exhibits and included under the following item:

3. Stenographic transcript of the testimony before Robert M. Gates, Trial Examiner of the National Labor Relations Board, on October 22 and 25, 1937, including all exhibits introduced in evidence.

4. Copy of supplemental decision, findings of fact, conclusions of law, and order issued by the National Labor Relations Board on December 17, 1937, together with affidavit of service and United States Post Office return receipts thereof.

IN TESTIMONY WHEREOF, the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 22nd day of December, 1937.

NATHAN WITT,
Secretary.
National Labor
Relations Board

(Seal)

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